

**Harrison, Brenda**

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**From:** Ex. 6, 7c  
**Sent:** Monday, December 07, 2015 1:28 PM  
**To:** Ex. 6, 7c Ex. 6, 7c @mercergov.org  
**Cc:** Shorewood Heights; Ex. 6, 7c @mercergov.org; Title VI Complaints; Ex. 6, 7c  
**Subject:** Re: Is the roof safe?

Dear Shorewood,

We've reported ceiling/roof issues to you a number of times and there's been no resolution. I've even provided pictures of the roof which may be getting pushed by water towards us (with roughly 8 lbs of weight per Gallon of water) - we've still not had any feedback from you.

I've taken pictures as of last Thursday night 12/3/2015 - (even though you had come to our unit over a month ago to review the leaked roof) and your office has not even bothered to reach out to us. I've taken the extra step of even writing this issue on my rent check's memo section - still no one from Shorewood has contacted me.

Just to let you know, these are pre-WWII buildings meaning they have **LEAD** and **ASBESTOS** currently being **ATOMIZED** and is in our air due to the rain and the ceiling bulging towards us. Your office's lack of any willingness to address this issue over the past number of months has directly resulted in us breathing atomized air that's full of carcinogens. I wanted to let you know this as this is an ongoing issue and your office has done nothing to help us in this regard.

Any health consequences impacting our respiratory tract or cancer causing agents getting in our system would be a direct result of your negligence which has continued over since our apartment had flooded, the water quality issues left unresolved and the ceiling issue still remains unresolved.

Ex. 6, 7c

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**From:** Ex. 6, 7c  
**To:** Shorewood Heights Manager; Ex. 6, 7c @mercergov.org  
**Cc:** Shorewood Heights; Ex. 6, 7c @yahoo.com; Ex. 6, 7c @mercergov.org  
**Sent:** Thursday, December 3, 2015 8:15 PM  
**Subject:** Is the roof safe?

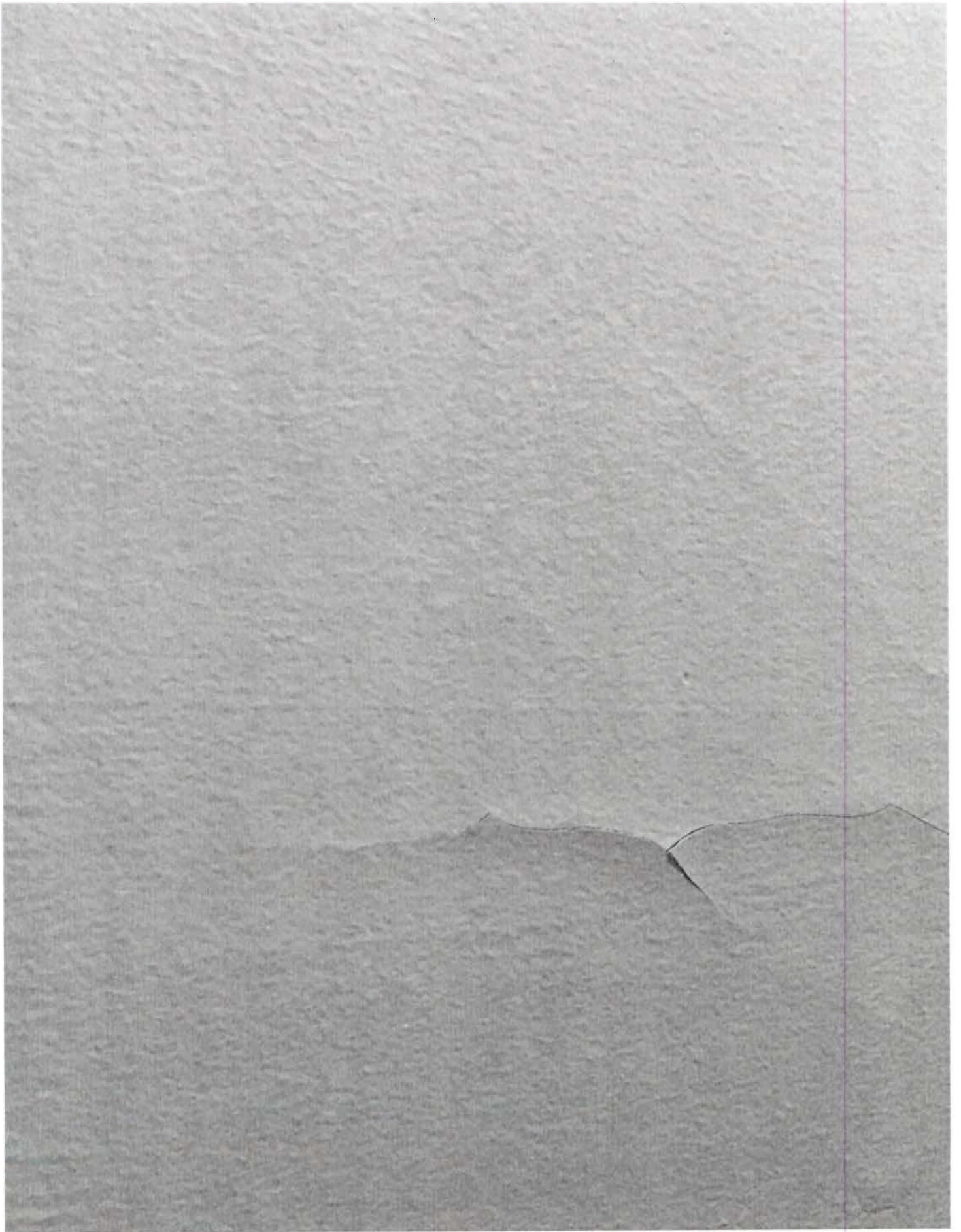
Hello:

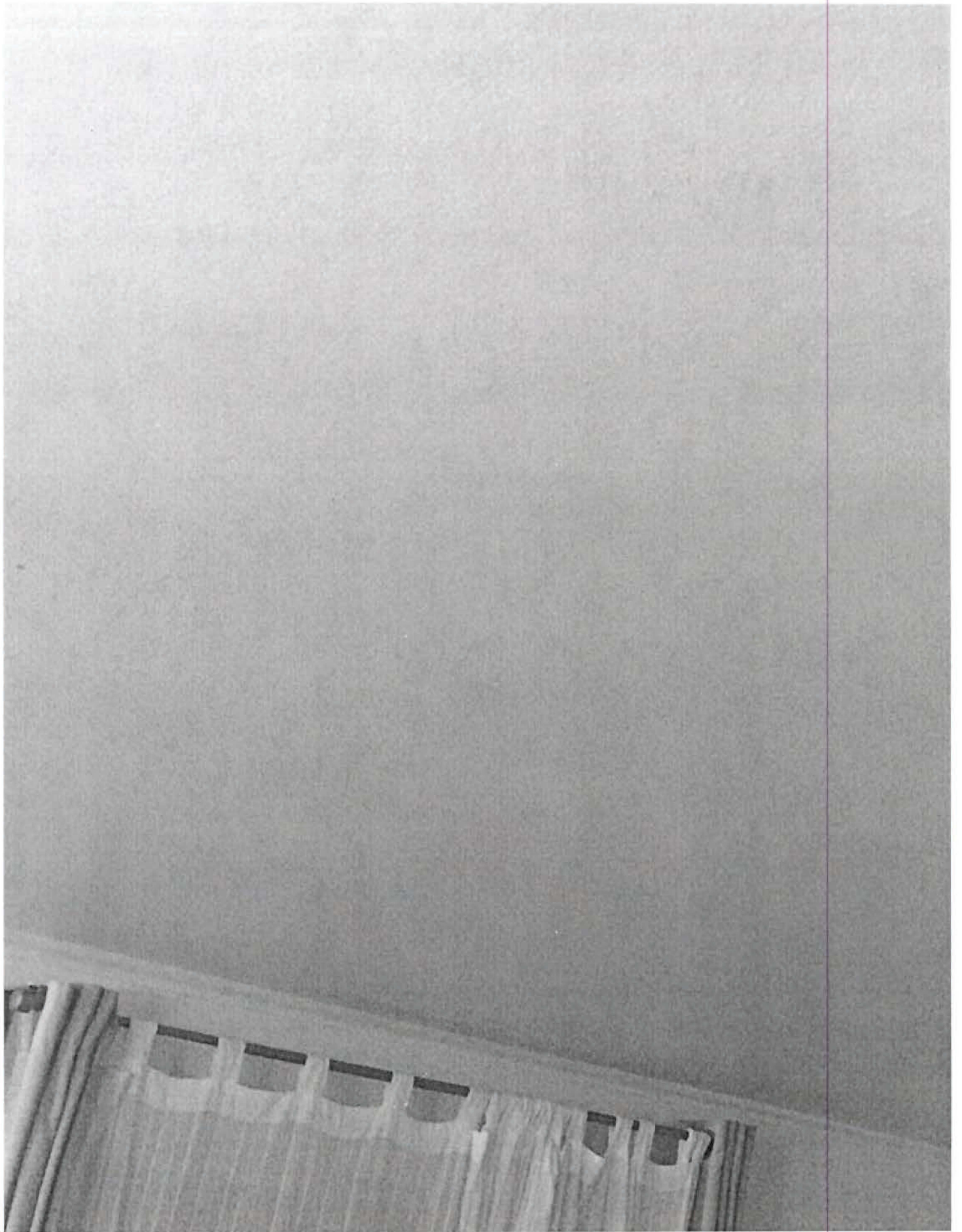
We had reported that our roof was leaking (2nd time this year). It does not leak right now but want to make sure that it is still safe to live in our unit. We have noticed our ceiling is not flat and has been showing signs of something pressing from the roof and just want to confirm that it is structurally safe to live in our unit until we leave on the 15th of Dec.

The lines you see are not due to camera lighting/flash but actual imprints from the material in the ceiling. It's of a concern to us and we're not sure if this is normal or is it even safe given all the rain we've been having?

I've attached a few pictures so please confirm. We had also shown this to you on the last visit.





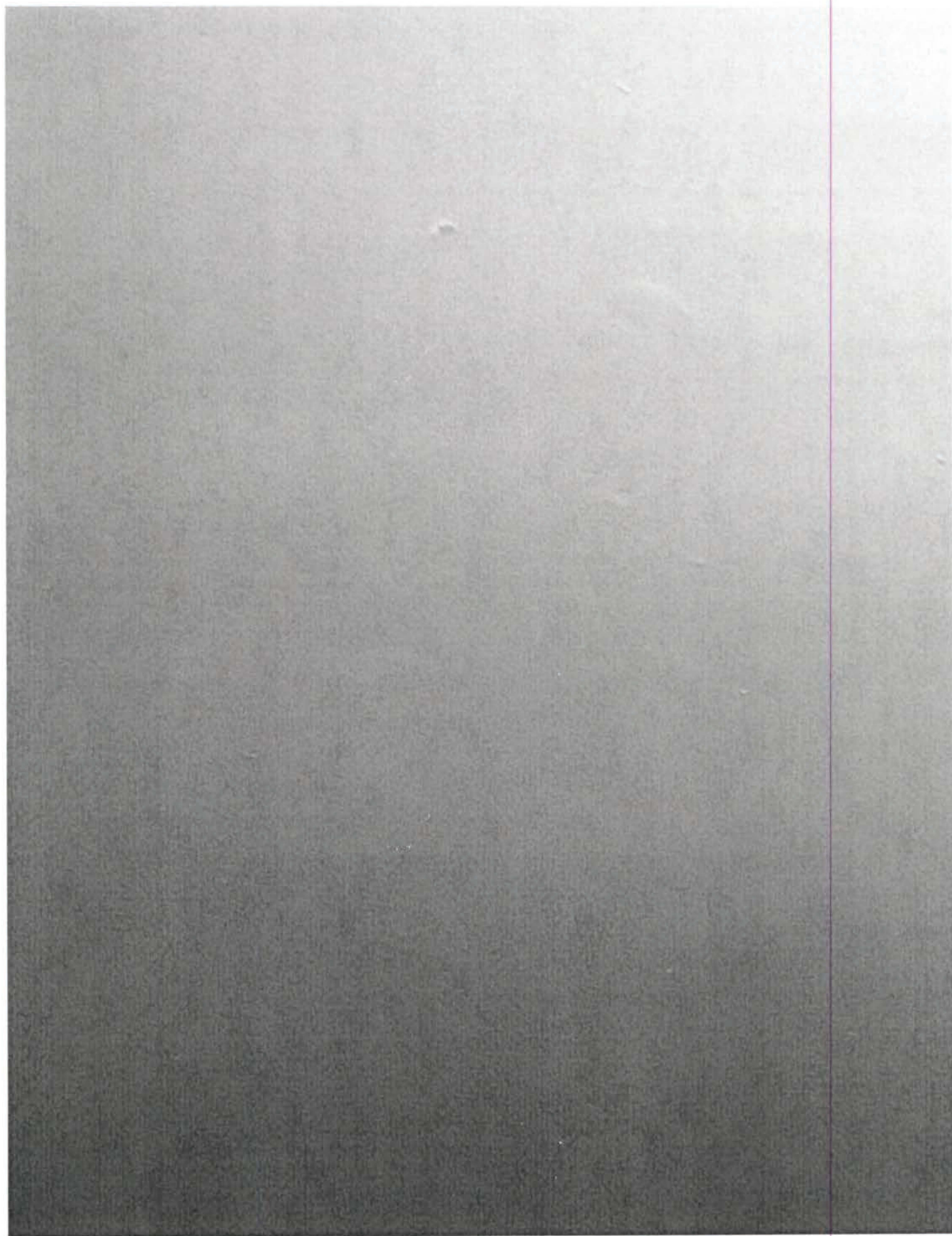


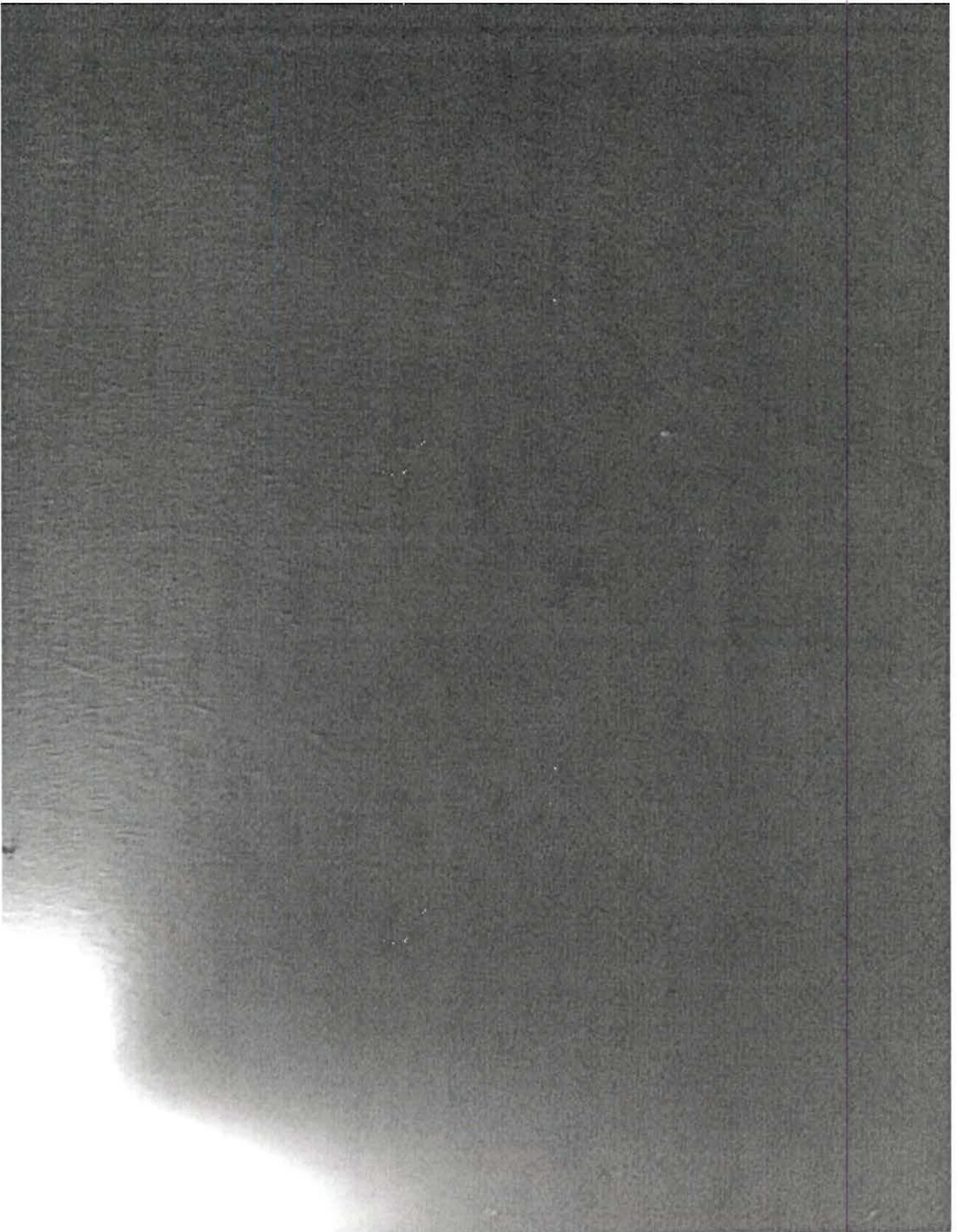




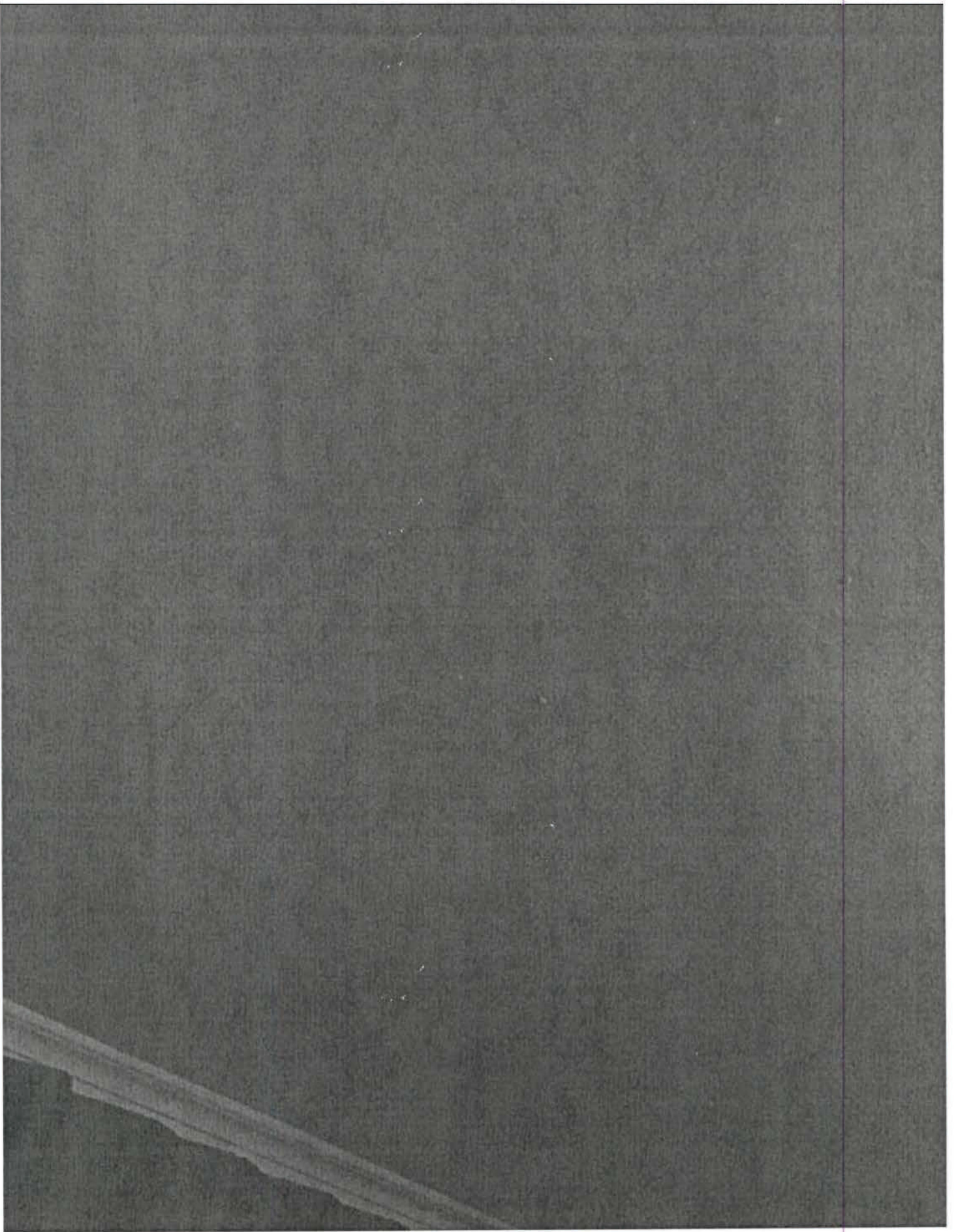


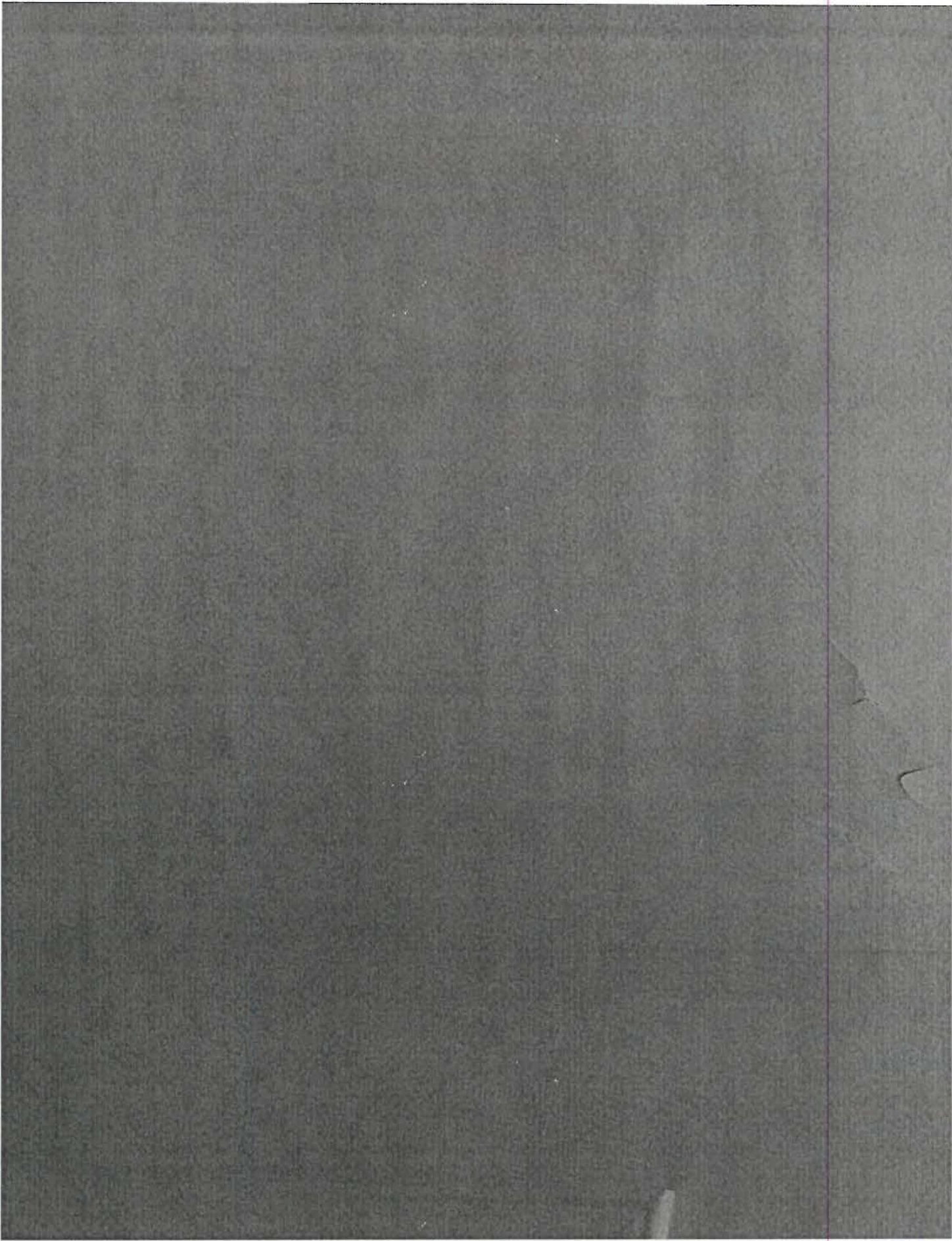




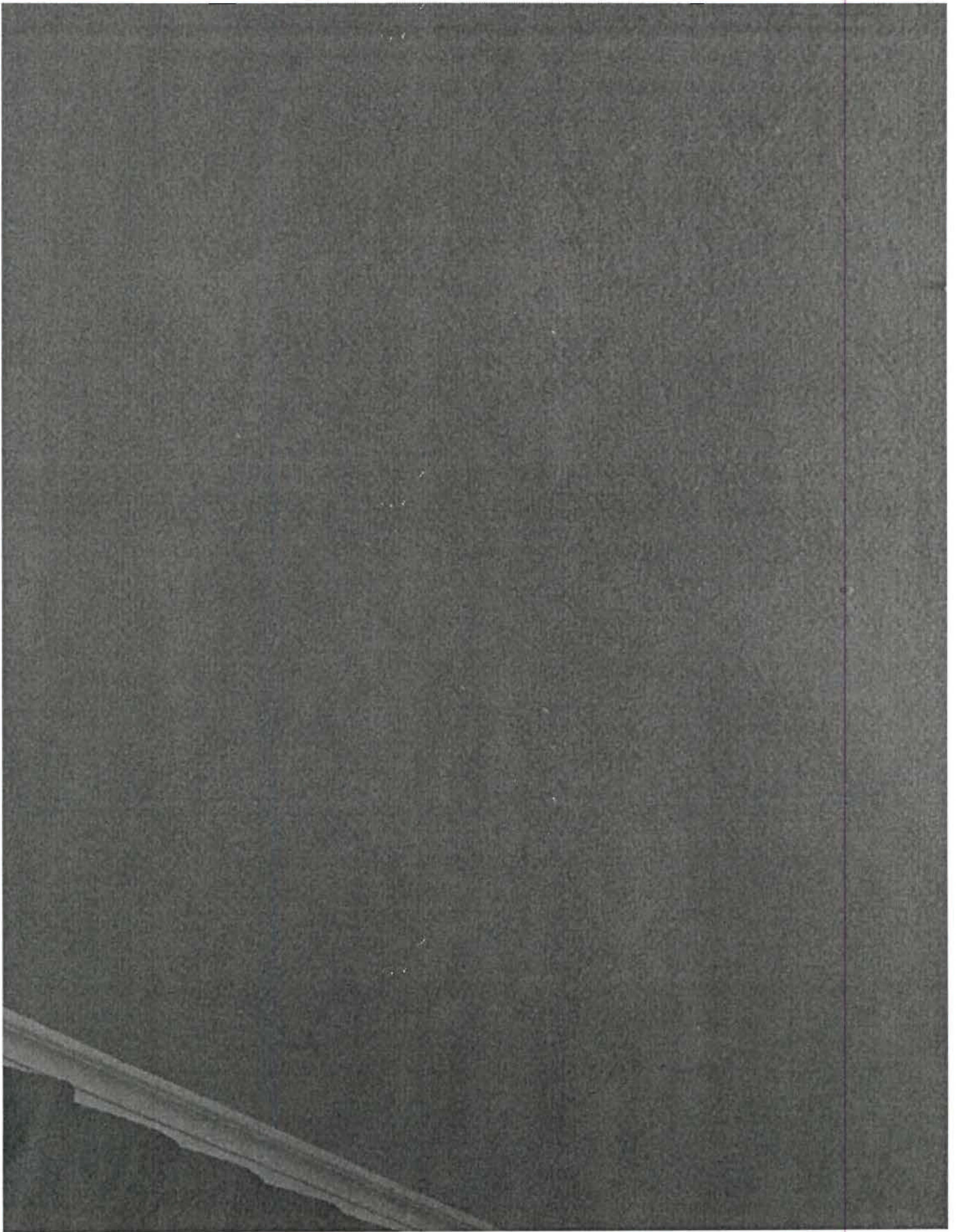












Thx  
Ahmad

On Nov 17, 2015, at 8:02 PM, Shorewood Heights Manager  
<[ShorewoodHeightsMgr@pinnacleliving.com](mailto:ShorewoodHeightsMgr@pinnacleliving.com)> wrote:

Good evening **b(6) Privacy**,

We received your notice and it is in our system. We have you scheduled for move out on 12/15/2015 as you requested.

Thank you for letting us know,

Chézon Reynolds  
Property Manager  
Pinnacle  
Shorewood Heights  
3209 Shorewood Drive  
Mercer Island, WA 98040  
O: 206.232.1300 | F: 206.232.7512  
[ShorewoodHeightsMgr@Pinnacleliving.com](mailto:ShorewoodHeightsMgr@Pinnacleliving.com)  
[ShorewoodHeights.com](http://ShorewoodHeights.com)

Exceeding Your Expectations

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**From:** **b(6) Privacy** >  
**Sent:** Tuesday, November 17, 2015 7:15:57 PM  
**To:** **b(6) Privacy**; Shorewood Heights; Shorewood Heights Manager  
**Cc:** [graf@pinnaclefamily.com](mailto:graf@pinnaclefamily.com)  
**Subject:** Re: 30 Days Notice (9062 E Shorewood Dr. Apt 160)  
Please confirm that you've received the 30 days notice!

On Nov 14, 2015, at 8:51 AM, A. Obaidi <[arashobaidi@yahoo.com](mailto:arashobaidi@yahoo.com)> wrote:

Dear Shorewood Heights Manager:

This is my 30 days notice to inform you that I will be leaving my unit located at:  
9062 E Shorewood Dr. Apt 160, Mercer Island, WA 98040.

My last day at the apartment will be Dec. 15th, 2015.



You may forward all correspondence to the following mailing address starting Dec. 15th:

b(6) Privacy [REDACTED]  
[REDACTED]

Please confirm/acknowledge that you've received this 30 day notice.

Best Regards,

b(6) Privacy [REDACTED]  
[REDACTED]

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. Pinnacle and its related and subsidiary companies reserve the right to archive and monitor all e-mail communications through its networks. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and deleting the message and any attachment(s) from your system.

## Harrison, Brenda

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**From:** Farrell, Ericka  
**Sent:** Monday, December 28, 2015 8:05 AM  
**To:** Peterson, Samuel  
**Cc:** Harrison, Brenda  
**Subject:** FW: IS THE CITY OF BATON ROUGE MATCHING THE SERVICES IN OUR COMMUNITIES DOLLAR FOR DOLLAR YET,KIP?

Good Morning Sam,

I hope you have had a wonderful holiday. Welcome back. I have numbered this complaint 08R-16-R6 (Devils Swamp) for your records.

Ericka

-----Original Message-----

**From:** (b) (6) Privacy  
**Sent:** Tuesday, December 22, 2015 8:29 AM  
**To:** Farrell, Ericka <Farrell.Ericka@epa.gov>  
**Subject:** IS THE CITY OF BATON ROUGE MATCHING THE SERVICES IN OUR COMMUNITIES DOLLAR FOR DOLLAR YET,KIP?

Subject: IS THE CITY MATCHING THE SERVICES IN OUR COMMUNITIES DOLLAR FOR DOLLAR YET?

FILING YET ANOTHER FORMAL CIVIL RIGHTS VIOLATIONS COMPLAINT(S)

>  
> NORTH BATON ROUGE MINORITY AND POOR COMMUNITIES THROUGHOUT BATON ROUGE  
> ARE  
STILL STUCK IN DISCREPANCIES

> Kip our minority and poor communities throughout Baton Rouge want  
> answers. WE ARE STILL SUFFERING  
>  
> To: Councilman John Delgado (Read Mayor Holdens Testimony 19 JDC case#432169)  
> East Baton Rouge Council Members ( The Governing Body Of The  
> City / Parish OF East Baton Rouge)  
> William Daniel / Mayor Kip Holden And Administration

E.P.A. CIVIL RIGHTS DIVISION AND WHATEVER OFFICE / DIVISION / WHICH NEED TO BE INVOLVED

FROM: THE POOR / MINORITY COMMUNITIES THROUGHOUT BATON ROUGE

>  
> Our whole community is still suffering in everyway. The North Baton  
> Rouge  
Sewage Treatment Plant And The Devils Swamp is killing us.  
>  
> Words from Mayor Holden " My church is right there Greater King David B.C.  
> the complaints are consistent still. I think one of the arguments put  
> forth, I remember by my friend Doug Welborn was the cost. and I think

# Ex. 6, 7c

1. Are there still DISCREPANCIES IN THE AMOUNT OF MONEY BEING SPENT IN MINORITY COMMUNITIES AND POOR COMMUNITIES THROUGHOUT BATON ROUGE ?. (Read Mayor Kip Holdens Testimony 19th JDC case #432169)
2. Is the City MATCHING THE SERVICES IN OUR COMMUNITIES (SCOTLANDVILLE) DOLLAR FOR DOLLAR YET?
3. How will these problems be addressed ?

NORTH BATON ROUGE IS SUFFERING IN EVERYWAY, EVEN TODAY (Environmental Injustice, Civil Rights Violations, No Positive Community Development) NORTH BATON ROUGE IS SUFFERING AND HAS BEEN FOR YEARS.

>More words from Mayor Melvin Kip Holden My long held philosophy was

>that an

odor could not read a stop sign , so therefore, the odors did not stop at two or

> three streets. so you are buying out , and you are cosmetically taking

> out the houses rights there by it (N.S.T.P), but the odor is

> permeating the whole community. so the problems were really tremendous for a lot of people.

>

> THE ODORS, HEALTH PROBLEMS are still permeating OUR whole community,

> Please

feel free to contact me / us with answers (b) (6) Privacy

>

> Thanks,

> (b) (6) Privacy And The Concerned Citizens Of University Place

Subdivision



Ex. 6, 7c

Ex. 6, 7c

Ex. 6, 7c

Huntsville, TX 77320

December 26, 2015

Office of Civil Rights

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., N.W., Room 1201A

Washington, D.C. 20460

In Re: Formal Notice and Complaint That individual,  
Personnel, and concerted civil rights of  
persons, Fellow workers who are and have  
been assigned to perform work duties  
in the Estelle Unit Textile Plant, whom  
are and have been arbitrarily and capricious  
compelled to work in and under conditions  
and circumstances where proper breathing  
and respiratory equipment is and has been  
denied causing immediate and long term  
health ailments....

Dear Office of Civil Rights of the U.S. Environmental Protection Agency:

I, Ex. 6, 7c

, a person confined in the Texas Prison  
System at the Ex. 6, 7c Ex. 6, 7c Huntsville, Texas 77320  
and located and found in Walker County, Texas, who is also an Executive  
Member of The Texas Prison Labor Union, who does make and

Cont'd from page one / Formal Notice and Complaint office of Civil Rights USEPA/Pg 2  
and file the Formal Notice and Complaint declaring, stating, verifying, acknowledging, and complaining under the penalty of perjury of the laws of the United States and The State of Texas in accordance with and pursuant to 28 U.S.C. § 1746 and Tex. Civ. Prac. & Rem. Code, Sections 132.001-132.003, and do state in support of this Formal Notice and Complaint as follows.

Ex. 6, 7c, Ex. 6, 7c an offender who is confined in Ex. 6, 7c and further assigned at Ex. 6, 7c and being a housing area where Ex. 6, 7c Ex. 6, 7c For I

have personally observed offenders who work in this work assignment show visible signs of skin rash and epidermal illness and ailment as a result of being assigned to work in this work assignment. And further some of these same offenders, as well as, others who work in this assignment have breathing and bronchial illnesses and ailments caused by poor air quality within the Plant area where lint and dust is in abundance. As this and the fact that there is not issued a proper breathing and/or respiratory mask to those assigned to perform work duties in the areas where lint and dust is in abundance. For



Cont'd from page two / Formal Notice and Complaint Office of Civil Rights U.S. E.P.A.

the conditions and circumstances of overt and blatant disregard for the health and welfare of prisoners by compelling them to be exposed to hazardous and dangerous health and medical conditions that have immediate and long term medical and health adversities. As these persons who work in this adverse and dangerous conditions have been heard by me personally specifically complaining from the effects of the dust and lint they are compelled to breathe.

Accordingly, although this is not a coal mine, the effects of cloth lint and dust are equated in effect as coal dust causing Black Lung Disease. These prisoners are suffering from what I would describe as "Whit Lung Disease" that is and has been documented in textile mills as a primary cause of disease and death of its workers.

Hoping your office can and will promptly cause an investigation and seek appropriate corrective action to aid these prisoners whom are being intimidated, oppressed, retaliated, and threatened if they complain about the conditions. With this I close and affix my signature on this date of December 26, 2011 desiring it to be true correct. Thank you.

Sincerely, Ex. 6, 7c

Ex. 6, 7c

NAME Willie A. Miller  
TDC# 561014  
ESTELLE UNIT  
264 FM 3478  
MUNTSVILLE, TX 77320



NORTH HOUSTON TX 773

30 DEC 2015 PM 6 L

JAN 11 2016



Office of Civil Rights Staff Attorney  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave.; NW Room 1201A  
Washington, D.C. 20460

20460





## Lofthouse, Jeremy

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**From:** O'Lone, Mary  
**Sent:** Tuesday, March 08, 2016 1:08 PM  
**To:** Golightly-Howell, Velveta; Temple, Kurt; Covington, Jeryl  
**Cc:** Rhodes, Julia; Dorka, Lilian  
**Subject:** Title VI complaint sent to Lilian  
**Attachments:** EXHIBIT O AIR QUALITY NEWS RELEASE Dec17, 2008-Sprague.pdf; NOV, Notice of Violation 4154.eml; CALIFORNIA HEALTH AND SAFETY CODE 42400 AND 42402.doc; EXHIBIT R STORY for POLLUTION ON THE RIVER (1).doc; Pollution of the American river, Jerome Sprague - Google Search.html

All-

Just making sure that Lilian isn't the only one in OCR who received this complaint since she may not be checking her email. Didn't want to miss deadlines.

Thanks, Mary

Mary O'Lone  
Civil Rights and Finance Law Office  
Office of General Counsel  
US EPA  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4992

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**From:** Strauss, Alexis  
**Sent:** Tuesday, March 08, 2016 12:24 PM  
**To:** Quast, Sylvia <Quast.Sylvia@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>  
**Cc:** O'Lone, Mary <o'lonemary@epa.gov>  
**Subject:** FW: CORRUPTION WITHIN THE SACRAMENTO AIR QUALITY AGENCY

Simply FYI,  
Alexis

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**From:** Barbary, Andrea  
**Sent:** Tuesday, March 08, 2016 9:10 AM  
**To:** Strauss, Alexis <[Strauss.Alexis@epa.gov](mailto:Strauss.Alexis@epa.gov)>  
**Subject:** FW: CORRUPTION WITHIN THE SACRAMENTO AIR QUALITY AGENCY

Hi Alexis -- Forwarding to you, as R9's DCRO, for your awareness. Looks like a citizen in Sacramento has a complaint that he has asked OCR to investigate.

Andrea Barbary  
Office of Intergovernmental Relations  
U.S. Environmental Protection Agency  
202-564-1397

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**From:** Ex. 6, 7c  
**Sent:** Tuesday, March 08, 2016 10:04 AM  
**To:** Barbary, Andrea <[Barbary.Andrea@epa.gov](mailto:Barbary.Andrea@epa.gov)>  
**Subject:** Fw: CORRUPTION WITHIN THE SACRAMENTO AIR QUALITY AGENCY

----- Original Message -----

**From:** Ex. 6, 7c

**To:** [dorka.lilian@epa.gov](mailto:dorka.lilian@epa.gov)

**Sent:** Sunday, March 06, 2016 10:00 PM

**Subject:** Fw: CORRUPTION WITHIN THE SACRAMENTO AIR QUALITY AGENCY

Attached are:

1. The Air Quality News Release relating to the Jury award. December 17, 2008
2. The Notice of Violation (NOV) issued to me on March 14, 2000.
3. And the Health and Safety Code sections 42400 and 42402, which specifically states a maximum of \$1000.00 fine.

I would appreciate if you could explain the disparity of \$742,885 in civil penalties compared to a civil penalty of not more than one thousand dollars \$1,000.00

Additionally I included a brief story of the corruption of the Sacramento Metropolitan Air Quality Management District and a You Tube video of a crime they cover on behalf of Contractors

I would hope that your Agency would investigate this conduct and I will hear back from you.

Thank you,

Ex. 6, 7c

Ex. 6, 7c



Declaration Affidavit of Facts and Memorandum in Support of Affidavit of  
Probable Cause

Certified Mail #7015 1520000200192 167

Date: 3/23/16

David Grantham, EL  
c/o 601 near North Third Street  
Bayboro Territory, North Carolina Republic  
U.S.A - Postal Zone - [28515] USA

EPA File #20X-16-R4

U.S. (EPA) Environmental Protection Agency  
Deryl W. Cournfen / acting Deputy Director  
Office of Civil Rights (OCR) - Ariel Rios Building  
c/o 1200 Pennsylvania Ave. near NW / Room 2540  
Washington Territory, District of Columbia  
U.S.A - Postal Zone - [20460] - USA

RE: In response to your letter dated on March 10, 2016.

Dear Mr. Cournfen:

I do thank you for your prompt response.

As you stated, "The OCR is responsible for processing and resolving complaints all alleging discrimination by programs or activities that receive financial assistance from EPA." So, my question is as large as your agency expands even international, how is it not that the EPA/OCR agency jurisdiction not cover human rights violations in the U.S.A environment?

I have seen your National Standard Damage Claim Packet, for an official complaint, which I am requesting professional assistance. Also, to include official complaint of my civil liberties violated. Once the jurisdictional review is completed to except this complaint. I will be willing to give you names of all the "accused" and/or Co-conspirators.

MAR 29 2016



## I b(6) Privacy

\_\_\_\_\_, speaking on behalf of the Debtor, corporate entity, strawman, artificial person, fictitious entity, trust known as DAVID LEE GRANTHAM LIMITED © TRUST

The Affiant, the authorized Representative, Secured Party Creditor, executive Trustee, Aboriginal Indigenous Sovereign National, In Propria Persona, Attorney-in-Facto, Holder-in-Due Course and Tenthis Intervenor.

Being injured having no knowledge of the intent, the "Adhesion Contracts", non-disclosed purposes, obligations, placing burdens, presumptuous debts, and statutory substantive jurisdictions, without my mutual, or conscious agreement, or knowledge, intentions, through threat, coerce and duress. which becomes immediate VOID/Ab Initio and enforceable.

This "Declaration Affidavit of Facts and Memorandum in Support of Affidavit of Probable Cause", "are true, correct, and not meant to misled, being a "Formal Complaint".

THE HEREUNDER SIGNED, one of the people of the state, one of the united states of America Republic, Sui juris, a Sovereign National that enjoys superior jurisdiction as such, hereinafter "injured party", a faithful follower of Jesus the Christ, my Lord, in the laws of The Almighty Supreme Creator, first and foremost and the laws of man when they are not in conflict (Leviticus 18: 3, 4), does herein give notice and demand to the above-named (Magistrate/Ministerial/Judicial Administrative Officers), hereinafter "Accused". Pursuant to Matthew 5: 33-37 and James 5: 12, "let your yea be yea, and your nay be nay, as supported by Federal Public Law 97-280, 96 Stat. 1211." Injured party has personal knowledge of the claims herein, and hereby asseverates understanding the liabilities presented in Briscoe v Lathue 460 US 325.

Injured party, in Good Faith does hereby and herein provide ACCUSED with this lawful Notice and demand for damages resulting from injuries caused by said ACCUSED, impersonating a "judge" as follows:



## FACTUAL BACKGROUND

On 9 24 20 07, the ACCUSED acted in criminal and  
(month/day/year)

civil violations of said ACCUSED sworn duty of care to serve and to protect the people of the state pursuant to public officer's affirmed Oath of Office of record that caused severe injury to the injured party and causing substantial loss of said injured party's substantive rights and deprivation of injured party's freedoms resulting from above-name public officer's civil and criminal acts and unlawful trespass upon the injured party's Constitutionally guaranteed unalienable rights to life, liberty, property and pursuit of happiness, constituting a criminal breach of public trust by public officer, constitutional impermissible application of statute; violation of due process of law; fraud by scienter, concealment and that there was no controversy, crime or charges that exist in this instant matter and request is made upon facts and evidence that the court pursuant to its own motion dismiss the action in the interest of justice, and a party of a Constitutionally illegal so-called quasi-government enterprise. All acts done absent jurisdiction are acts of treason.

Although injured party objected to the actions of the ACCUSED and his or her assumed jurisdiction, those who kept injured party imprisoned and/or continued detainment under color of law did not respond to any of his demands and requests for proof of jurisdiction or for reinstatement of his liberty. ACCUSED (and co-conspirators) continued to assume the jurisdiction without proof of jurisdiction or any attempt at proof of jurisdiction. Injured party continues to be subject, under color of law, to the assumed jurisdiction, will and control of various persons against his/her consent.

What is that all about? First, it is about willful, wanton and knowing acts of criminal tyranny by exceeding jurisdiction against a people of North Carolina State, a National of the dominate race and one who enjoys dominate jurisdiction accordingly. Behind that it is about assuming there is a crime committed, without checking the facts. It is about presumption of guilt, until proven innocent. It is about refusing to hear the facts, or more specifically, refusing to acknowledge the visual facts of injured party's innocence.



It is about raw power in rebellion against the sovereignty of the state. By all appearance, the public official has declared his/her independence from the people, so much so that the public official now appears to regard itself as the guardian and the people as its ward, and accordingly is causing and or supporting these civil and criminal acts of criminal tyranny by criminal tyrants against one of the people of State, (North Carolina), the injured party hereunder signed.

There is no cause to usurp jurisdiction under color of law.

### The ACCUSED has a constitutional duty to not cause injury

The ACCUSED is obligated to a sworn/affirmed duty to not cause injury to any of the people of the State who never surrender their sovereignty to the agencies that they, the We, the People, created for the sole purpose of serving and protecting the people of the State, the posterity of the We, the People. All governmental officers, Federal and State officers are only official when they are acting under Art. 6, Sect 3 of U.S. Constitution Republic.

All official State and Federal government officers are acting under color of law and color of office if they hold an office under 5 U.S.C. Sect. 3331.

"To Swear (the Oath) is to call God to witness, and is an act of religion 3 Co. Inst. 165. Vide 3 Bouv. Inst. n. 3180, note; 1 Benth. Rat. of Jud. Ev. 376, 371, note."

There is a general rule that a ministerial officer, who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. Cooper v O'Conner, 99 F.2d 133.

The public officers had a duty to not cause injury. The ACCUSED is obligated to a sworn/affirmed duty to not cause injury to any of the people of the State who never surrender their sovereignty to the agencies that they created for the sole purpose of serving and protecting the people of the State to which the ACCUSED has an nondiscretionary duty and obligation to serve and to protect accordingly. Also, created a "Gatekeeping Order" to deny access to due process of law/court, which is a violation of "Constitutional Rights".

The ACCUSED contributed to the unlawful detainment of injured party, absent knowledge of sufficient judicial probable cause in breach of their moral, legal, and lawful duty to serve and to protect injured party as opposed to criminally trespassing upon injured party's guaranteed unalienable fundamental Rights as one of the people



and Cause injury to same. In accordance with the Universal Imperative, one must not engage in any activity such as extortion, lying, or breach of contract [public officer's Oath of Office] which would Cause an unwanted injury to another. These Universal Imperatives are Codified in the Codes of the State, i.e., penal Code, Civil Code, Business and Professional Code.

### The ACCUSED committed treason, Criminal trespass on injured party's rights

All violations committed are construed as acts committed in clear violation of the Declaration of Independence, the organic Constitution for and of the United States of America, absent sufficient judicial probable cause, with implied malice; to be willful, wanton and knowing acts of civil and criminal tyranny as each is a direct violation of the Public officer's Oath of Office, such additionally being treasonous acts committed against the Constitution and the injured party, such that the ACCUSED [supposedly] swore to serve and to protect. All criminal acts are unlawful trespass upon injured party's rights consistent with Kidnapping, aka man stealing, of the injured party hereunder signed and are construed as treason. All acts are committed with implied malice in violation of the GOD-given unalienable due process Rights of the injured party. There must be at least sufficient judicial probable Causes apparent in order to acquire jurisdiction over any one of the American people prior to any act taken to deprive him of his freedom.

Further, there is no such thing as consent as a Sovereign never surrenders his sovereignty to the agencies he created to serve him and to consider there is would be an act of fraud against the Constitution and the people, specifically in this matter.

### Injured party's constitutionally guaranteed unalienable fundamental Bill of Rights

The new United States of America Republic adopted the Bill of Rights, the first ten amendments to the U.S.A Constitution, confirming the fundamental rights of its citizens on December 15, 1791. The ACCUSED has committed act(s) in violation of injured party's constitutionally guaranteed fundamental rights pursuant to injured party's Bill of Rights. Said act(s) Cause injury to said injured party.

"All codes, rules and regulations are applicable to the government authorities only, NOT human / Creators in accordance with God's laws" Redriques v Ray Donovan  
[U.S. Department of Labor,] 769 F. 2d 1344, 1348 [1985]



## Additional Violations:

- 18 USC Sec. 241, 242, 42 USC Sect. 1983, 1985, 1986
- According to the "United Nations Declaration on the Rights of Indigenous Peoples" Sub-Commission on Prevention of Discrimination and Protection of Minorities Forty-fifth Session: Art. 2; Art. 5; Art. 9; Art. 14; Art. 31; Art. 32
- Principle III of the United Nations Declaration of The Rights of the Child (Every child shall be entitled from his/her birth to a Name and a Nationality)
- United States of America Constitution - Art. 3, Section 2; Amendment (5) (Liberty Clause) and Amendment (9) (Reservation of Rights of the People); Art. III (c).
- Treaty of Peace and Friendship between United States of America and Morocco of 1787, superseded by the Treaty of 1836 (Note: Recorded in the United States at large, foreign treaties, Also in the Book of Treaties [1787-1845] pages 100-105]. Also the Articles of Confederation of 1781, the Constitution of the United States of 1789 (Organic), the Bill of Rights of 1791, the Divine Constitution and By-Laws of the Moorish Science Temple of America.
- Resolution Number Seventy-Five (75), dated April 17, 1933 (Moorish American Society of Philadelphia and use of their Name - Bey and EL.

I am asking, please, for any/all suggestions, assistance, and cooperation in the following through with this civil complaint. I ask that you contact me with a less scrutinize, more confidential contact: Mr. Mack Virgil /

113 Chloe Drive / Fayetteville, N.C. 28301-7637 (Call 919-488-4292).

Mention my NAME or write at the above address, your acceptance! **THANK-YOU!**

Please understand that while I seek to resolve this matter, I respectfully with "Good Faith," "Clean Hands" and "with Honor" and "Without Prejudice"; "All Rights Reserved" submit this Declaration Affidavit of Facts and Memorandum in Support of Affidavit of Probable Cause.

I affirm that all of the foregoing is true and correct. I affirm that I am of lawful age and am competent to make this "Affidavit". I hereby affix my own signature to all of the affirmations in this entire document with explicit reservation of all my unalienable rights and my specific common law right not to be bound by any contract or obligation which I have not entered into knowingly, willingly, voluntarily, and without misrepresentation, duress, or coercion.

FURTHER AFFIANT SAITH NOT.



"Notice to Agent is Notice to Principal, Notice to Principal is Notice to Agent!"

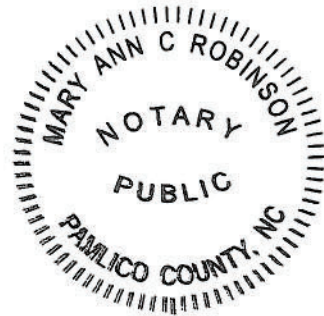
Acknowledgement

Affirmed TO and Subscribed before Me

This 23 day of March, 2016

Mary Ann Robinson  
(Notary Public)

Date: 3-23-16



2-26-2020  
(Commission Expires)

Affidavit Certificate of Service - Exhibit

The Affiant certifies that a copy of these <Affidavits>; "Declaration Affidavit of Facts and Memorandum in Support of Affidavit of Probable Cause," and "Affidavit Certificate of Service - Exhibit," has been served by this United States of America Republic Postal Service - pre-paid postage upon the following addressee:

CC: U.S. Environmental Protection Agency (EPA)  
Deryl W. Courington / Acting Deputy Director  
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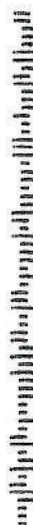
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Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail code 1201A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

April 11, 2016

Concerned Citizens of Carbondale  
Carbondale Racial Justice Coalition  
Post office Box 2201  
Carbondale, IL 62902

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We are writing to file a complaint to the Office of Civil Rights of the USEPA regarding what we believe is a longstanding environmental civil rights violation due to the disproportional health and safety impact of a site currently under EPA oversight in our city. This site, the former Koppers Wood Treatment Plant in Carbondale Illinois, has been designated an RCRA Corrective Action Site. The violation we allege pertains to the USEPA designation and pursuant cleanup of a contaminated site adjacent to and upwind of a residential district populated almost entirely by African Americans. We write your office today with questions about whether the kinds of corrective measures the USEPA has taken have been as aggressive or thorough as they would have been if the contaminated site was situated next to a neighborhood defined by a different demographic.

We are Concerned Citizens, a grassroots organization that studies and highlights local histories, laws, conditions and regulations pertaining to issues of welfare and justice of African Americans in Carbondale. Along with a younger organization, the Racial Justice Coalition, we advocate for and represent Carbondale's African American community regarding issues of discrimination and civil rights. As we draft this letter to the Office of Civil Rights of the USEPA, we are aware of that the US Commission on Civil Rights is already investigating your offices due to alleged unevenness in enforcement of pollution regulations. This serious allegation implies that the EPA has no effective oversight to ensure that clean up and toxin evaluation standards are evenhanded, regardless of the racial or economic constituency of those most impacted. This echoes exactly the suspicions we have harbored in our conversations with the District 5 EPA inspectors who have been evaluating the cleanup at Koppers/Beazer East. We, like the communities represented in the US Commission on Civil Rights' challenge to your office, already bear a burden of historic discrimination and systemic poverty. We depend upon your office and the USEPA to be fair, by ensuring that we are not also exposed disproportionately to industrial contaminations in the form of toxins, epigenetically active compounds and residual pollution.

In Carbondale, Illinois, the Koppers plant was extant prior to the expansion of a residential neighborhood at its south end. This neighborhood grew as a result of Jim Crow housing discrimination,

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formal and informal, that relegated African Americans to settle in this area of town, and not any other. To this day, the population in this neighborhood is largely poor and African American. We believe there may be discrimination in the testing and cleanup oversight at the former Koppers Wood Treatment site because the toxins and derivative compounds saturating the ground here disproportionately affect the black and brown people of this community. This population was historically impacted by Koppers's creosote in terms of health outcomes, and today, in the clean up phase has the most to lose or to benefit, depending upon the long-term outcome of this site. We ask if as much is being done as is possible to ensure the area is contaminant free, or if this is being treated as a sacrifice zone.

Following is our roster of concerns and questions, along with suggestions as to what kinds of amends or studies we feel could begin to address the historic and present discrimination in the form of environmental civil rights injustice.

- Health studies/Cancer survey/health outcomes surveys never conducted in this neighborhood  
For the past decade, we have monitored the EPA's cleanup process at the former Koppers Wood Treatment Plant site. For just as long, we have advocated for specific measures to identify the health risks and damage this facility has posed to the community in the past, and today, in the form of epigenetic damage to the population, cancer deaths, and ongoing toxic contamination flow from the movement of sub-surface and surface water off the property and into local yards and creeks. Our calls for these studies have fallen on deaf ears. Related to this are people in the community who are aware of patterns of particular cancers; we believe there should be collection of such data that could be used as evidence and for community education.

- Possible discrimination: No offsite testing

In Gainesville, FL, site of another Koppers plant, the EPA sampling included taking dust samples inside homes and offsite soil and water sampling. In Carbondale, there is a high potential for dust contaminated with dioxin or other chemicals to leave the property in the air or for contaminants to enter the ground water or the creeks running through the property. Neighbors of the Beazer East property have repeatedly requested testing of their groundwater or wells over a period of years. Why does the EPA insist they do not need to test offsite? If the neighborhood nearby was demographically Caucasian or the property values were higher, would offsite testing have been done?

- Possible discrimination in evaluation of scientific data/testing methods

During the recent period when the Brightfield Corp was conducting a financial assessment of the Koppers/Beazer East property as part of their solar power proposal, we had new surge of debate about the property. Given that the follow up on the above questions has been weak, nearby residents preferred there be no new development on the site.

When confronted with the question of developing the contaminated land for solar power, the EPAs testing results played a role in assuring the city it could accommodate Brightfield's business proposal to convert the land to a solar field, despite the acknowledgement the land is still laden with toxins. The EPA officials present at community meetings in April and July, 2014 patronized those people from the Northeast side of town who challenged the development plans and, and only reluctantly, agreed to do more tests and to present them to a community meeting in the late spring,

2015 which has not occurred with no word. In the wake of Flint Michigan, the silence of our EPA district office is unnerving.

At the community meeting on February 23, 2015, EPA district office representatives also agreed to share information with Ex. 6, 7c, a senior soil scientist and microbiologist who, after reviewing the EPA research, had very specific questions about the testing methods used around the Ex. 6, 7c East property. On May 13, 2015, Ex. 6, 7c sent a letter to the EPA with further comments and questions about the testing methods and locations around the property that had been tested. Ex. 6, 7c's letter outlined limitations of the testing methods and asked for further explanation. He also suggested ways to <sup>expand</sup> the testing so as to give a degree of certainty to potentially affected citizens. As of this date Ex. 6, 7c still has not had a response from the EPA.

- Discrimination by EPA for not responding to legitimate concerns of the community.

The above interactions have led to a sense that the EPA responds to other factors besides the legitimate concerns of those who live within the contaminated community. The current US Commission on Civil Rights investigation, and other current situations especially in District Five reinforce this assumption. We wonder if this neighborhood was white or if it was located in a city with a larger population, would there be a different kind of response to citizen concerns?

- Possible discrimination in designation categories.

We would like to know whether contamination designation categories have a bearing on the remedies that are available to a cleanup. Many of the other former creosote facilities such as and including other Koppers in the identical industry- have been designated Superfund sites. Why not this one? Koppers Carbondale was, at one time, one of the largest facilities of its kind in the world. Does a Superfund site mean there are more resources or recourses available to the community as part of the cleanup process? If this neighborhood had been white, or less rural, would there have been a more tenacious cleanup? Why does the clean up in this location not consist of known bioremediation strategies that have been used and worked in other sites such as Oroville, Ca? If this neighborhood was not primarily African American, would there have been a more meticulous health study or expanded access to health care?

The Concerned Citizens of Carbondale wants to know if the EPA is doing the maximum that can be done for this site and for the people who have been impacted by the toxic brews in the soil and air in the northeast side of Carbondale. We suspect the standards were lowered because the location is rural, and that inquiry has not been rigorous because the nearest, most intimate population that is impacted are people color. We want to know if a different designation would have expanded access to health care and testing for the population, and allow an investigation into epigenetic disorders. As we allude to above when we mention Flint, each week uncovers new stories of how civil rights mandates are not being upheld fairly when it comes to the injustice of being subject to environmental contamination. We ask for a review of this case by your Civil Rights office, and for an investigation into the questions we have posed.

*Jonas Truliy,*

**Ex. 6, 7c**

*For Concerned Citizens of Carbondale*

Command (117211)  
Per 2201

Carbondale, IL  
62902



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Director of the Office of Civil Rights

US EPA

Milwaukee 1201A

1200

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20460







# Legal Aid of NorthWest Texas

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April 25, 2016

Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail Code 1201A  
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Washington, DC 20460

VIA E-Mail: Title\_VI\_Complaints@epa.gov  
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U.S. Department of Housing and Urban  
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Southwest Office  
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VIA Fax: (817) 978-5876

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan Street, Suite 1620  
Dallas, Texas 75201-6810

VIA E-Mail: ocr@ed.gov  
VIA Fax: (214) 661-9587

## **Re: Complaint under Title VI of the Civil Rights Act of 1964**

Dear Environmental Protection Agency/Department of Housing and Urban  
Development/Department of Education Title VI Program Coordinator:

On behalf of Ex. 6, 7c and Ex. 6, 7c, residents of Dallas, Texas, we file this  
complaint under Title VI of the Civil Rights Act of 1964 (Title VI).

### **I. Introduction**

For the reasons stated below, we request that the Environmental Protection Agency (EPA), the Department of Housing and Urban Development (HUD), and the Department of Education (DEPED) undertake a Title VI compliance investigation of the City of Dallas, Texas (Dallas).

Dallas took discriminatory action on October 28, 2015 when the Dallas City Council approved public assistance funds in the amount of \$2.5 million to subsidize infrastructure for development of a private real estate transaction between Argos Ready Mix South Central (Argos) and West Dallas Investments, L.P. (WDI). The transaction results in a land swap deal and the

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relocation of the Argos existing ready mix concrete plant from 240 Singleton Boulevard (land then owned by Argos) to 2900 West Commerce (land then owned by WDI).<sup>1</sup>

This complaint is timely under 40 C.F.R. § 7.120(b)(2), 24 C.F.R. § 1.7(b), 34 C.F.R. §100.7(b).

We request you review Dallas's actions in facilitating the relocation of the Argos batch plant to a National Priorities List Superfund Site (Superfund site) located in a majority Hispanic and African American neighborhood. The relocation site is less than 500 feet from a public middle school and within a mile of a 196 unit public housing property and private residences.<sup>2</sup> We request that the EPA, HUD, and DEPED take all appropriate measures to ensure Dallas's compliance with Title VI.

Dallas's decisions and procedures violate its duty to administer all programs and activities in a nondiscriminatory manner. These violations include both actions that have caused and will cause significant adverse impact on the basis of race, color, and ethnicity, as well as acts that constitute intentional discrimination based on these protected classes, which are prohibited by Title VI.

Complainants allege Dallas violated Title VI's prohibition on discrimination as follows:

1. Subsidizing the relocation of the Argos batch plant, without adequate consultation with and mitigation for minority residents of these neighborhoods, will continue to perpetuate discriminatory and significant adverse impacts on African American and Latino residents in West Dallas.
2. Subsidizing the relocation of the Argos batch plant without adequate consideration of the residents' concerns perpetuates past discrimination against African American and Latino residents in West Dallas who have historically borne disproportionate environmental impacts as a result of prior zoning and siting of heavy industries, including the RSR lead smelter which is now a Superfund site.
3. Subsidizing the relocation of the Argos batch plant to a location less than 500 feet from a public middle school, whose students are 98.2% Latino and African American,<sup>3</sup> is discriminatory of equal education opportunities. Dallas's failure to adequately consider the effects of the plant relocation on the students' access to, quality of and level of educational experiences and programs is a violation of their obligation to ensure Title VI compliance.
4. Subsidizing the relocation of the Argos batch plant within a mile of Kingsbridge Crossing, home to primarily low income African American and Latino residents of West Dallas, discriminates against and forces West Dallas residents to bear the brunt of environmental and health impacts of the Argos batch plant operation.

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<sup>1</sup> See Exhibit A at 6-8.

<sup>2</sup> See Exhibit B

<sup>3</sup> <https://mydata.dallasisd.org/docs/CILT2016/DP74.pdf>



5. Dallas intentionally discriminated against African American and Latino residents in West Dallas implementing discriminatory procedures by prioritizing and subsidizing commercial and industrial development over the rights and needs of West Dallas residents through development agreements which resulted in the selection of the current site to be used for the relocation of the batch plant, by failing to adequately consider the impact of the relocation on the residents of West Dallas, by failing to adequately provide and allow for meaningful public participation of residents, and by ignoring the input and concerns of residents.

## **II. Complainants**

Complainants Ex. 6, 7c and Ex. 6, 7c are African American residents of West Dallas.

Ex. 6, 7c and Ex. 6, 7c are concerned about the health and safety issues posed by the relocation of the Argos batch plant, further transformation of West Dallas into a heavy industrial area, increase in industrial traffic on roads that are adjacent to a public school and family public housing property, and the reduction of property values in the neighborhood.

The exclusion of West Dallas residents from meaningful participation in the decision making process regarding the allocation of public assistance to Argos and the zoning and siting of heavy industry in their neighborhood exacerbate and perpetuate past discrimination against African American and Latino residents in West Dallas.

## **III. Dallas must comply with Title VI as a recipient of federal funding**

Dallas is a past and current recipient of federal funding. These include grants from the EPA, HUD, and DEPED.<sup>4</sup>

As a recipient of federal funding, Dallas is required to provide assurances of compliance with Title VI.<sup>5</sup> Additionally, Dallas is required to assure “nondiscrimination in all of its programs, activities, and services, [regardless of] whether those programs, activities, and services are federally funded or not” by its own Title VI Nondiscrimination Policy.<sup>6</sup> Furthermore, that same policy requires Dallas to assure compliance with Executive Order 12898 and address environmental justice issues in minority populations and low income populations.<sup>7</sup>

Accordingly, Dallas’s actions in facilitating the relocation of the batch plant are subject to the requirements of Title VI.

## **IV. Factual and Historical Background**

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<sup>4</sup> The City of Dallas received federal grants from the EPA, HUD, and DEPED in fiscal years 2013, 2014, 2015, and 2016. *See* Exhibits C, D, and E.

<sup>5</sup> *See* 40 C.F.R. part 7 (EPA), 24 C.F.R. §1.5 (HUD), 34 C.F.R. §100.4 (DEPED)

<sup>6</sup> *See* Exhibit F

<sup>7</sup> *Id.*

The neighborhoods of La Bajada, Los Altos, Homestead, Gilmore, Muncie, Victory Gardens, Kingsbridge Crossing, Bickers Park, Ledbetter Gardens, Westmoreland Gardens, Eagle Ford, La Loma, La Estrella, and Westmoreland Heights, collectively, (West Dallas) will be negatively impacted by the relocation of the batch plant.

Dallas has a history of regulating land use throughout the city.<sup>8</sup> West Dallas contains 12 brownfields sites, and one Superfund site.<sup>9</sup> The one-mile radius of the Superfund site—which is adjacent to the relocation site—has an approximately 97 percent minority population.<sup>10</sup> In comparison, Dallas County has a 47 percent minority population.<sup>11</sup>

The area where the concrete batch plant will be relocated to is currently designated as a “racially/ethnically-concentrated area of poverty” by HUD.<sup>12</sup> As such, it is clear that there is a long history of Dallas government approval for siting industrial activities near low income and minority neighborhoods in West Dallas.

### **A. History of the Superfund Site**

A large lead smelter was operated by RSR and/or its predecessors from 1936 to 1984 near the intersection of Singleton and Westmoreland.<sup>13</sup> The primary activities of the site were “the preparation of scrap lead batteries, hard and soft lead refining process, alloying, and fabrication.”<sup>14</sup> The smelter and a large area surrounding it were added to the National Priorities List as a Superfund site in the early 1990s.<sup>15</sup> This site is immediately adjacent to the relocation site for the batch plant.<sup>16</sup>

Air emissions were virtually uncontrolled for over 30 years, until the City of Dallas enacted a lead control ordinance in 1968.<sup>17</sup> Ordinance violations immediately followed, and the 1970s brought various enforcement actions and compliance efforts by both Texas and federal agencies.<sup>18</sup> Various investigations have found dangerous environmental contaminants including lead, arsenic, and cadmium.<sup>19</sup> Such contaminants were released as air emissions from the smelter, the use of

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<sup>8</sup> *Dallas City Code* Ch. 51P, Pre.51P-1.102.

<sup>9</sup> CIMC Map Tool, Online at

[https://ofmpub.epa.gov/apex/cimc/f?p=CIMC:73::NO:73:P71\\_WELSEARCH:75212%7CZipcode%7C%7C%7C%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7C%7C-1%7Csites%7CN%7Cbasic](https://ofmpub.epa.gov/apex/cimc/f?p=CIMC:73::NO:73:P71_WELSEARCH:75212%7CZipcode%7C%7C%7C%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7Ctrue%7C%7C-1%7Csites%7CN%7Cbasic).

<sup>10</sup> Environmental Protect Agency, Census 2010 1-Mile Report,

<https://ejscreen.epa.gov/mapper/demogreportpdf.aspx?report=census2010sfl&coords=-96.8725%2C32.77694&featype=point&radius=1.0>.

<sup>11</sup> Community Facts – Census 2010, available online at

<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

<sup>12</sup> U.S. Dept. of Housing and Urban Development, Affirmatively Furthering Fair Housing Data and Mapping Tool, online at <http://egis.hud.gov/affht/#>. Accessed April 21, 2016.

<sup>13</sup> CDC Agency for Toxic Substances & Disease Registry, Public Health Assessment – RSR Corporation, August 16, 1995. Available online at <http://www.atsdr.cdc.gov/hac/pha/pha.asp?docid=134&pg=0>.

<sup>14</sup> *Id.*

<sup>15</sup> <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0602297>

<sup>16</sup> See Exhibit B

<sup>17</sup> CDC ATSDR Report, *Supra* Note 13

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



battery chips and slag as residential fill, and the disposal of battery chip and slag materials in landfills and dumps.<sup>20</sup>

In the early 1980s, despite modifications by RSR, the smelter site continued to fail to meet federal air quality standards, causing the Texas Air Control Board to take action.<sup>21</sup> At this same time, blood screening of area children indicated excessive lead exposure.<sup>22</sup> In 1983, the State of Texas and the City of Dallas sued RSR for its violations of city ordinances and the Texas Clean Air Act.<sup>23</sup> The smelter facility was finally forced to cease operations in 1984 when the Dallas Board of Adjustment denied a necessary operating permit.<sup>24</sup>

Nonetheless, the effects of the decades of pollution continued well beyond the closing of the smelter. Remedial work began, as did a public health and medical monitoring program.<sup>25</sup> In 1991, soil samples taken by the Texas Water Commission showed elevated levels of lead, arsenic, and cadmium, resulting in a request that the EPA review the site.<sup>26</sup> The EPA then began a second remedial program, and by 1993, the RSR site had been designated as a “Superfund” site.<sup>27</sup>

As detailed above, the smelter operations negatively affected the health of the community. West Dallas residents recalled “everything being gray” with particulate from the smelter.<sup>28</sup> The residual effects of the smelter’s operation continue to affect West Dallas.<sup>29</sup> This history and the current facilitation of the batch plant’s relocation has led area residents to not trust their elected officials.<sup>30</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> <http://cityhallblog.dallasnews.com/2015/10/dallas-will-spend-2-5-million-to-help-trinity-groves-cement-plant-move-near-middle-school.html/>

<sup>29</sup> <http://www.dallasobserver.com/news/dallas-honored-for-housing-poor-people-on-former-superfund-site-7783908>

<sup>30</sup> <http://dfw.cbslocal.com/2015/10/28/west-dallas-concrete-plant-relocating-aided-by-2-5-million-boost-from-the-city/>; and <http://cityhallblog.dallasnews.com/2015/10/dallas-will-spend-2-5-million-to-help-trinity-groves-cement-plant-move-near-middle-school.html/>

## **V. Dallas's violation of Title VI**

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.<sup>31</sup>

Dallas, a recipient of federal financial assistance from the EPA, HUD, and the DEPED, has violated Title VI by its October 28, 2015 decision to provide \$2.5 million of public assistance to Argos to facilitate the relocation of its batch plant to a site in the majority minority neighborhood of West Dallas.

Dallas's actions will benefit Dallas, Argos, and West Dallas Investments, L.P. (WDI) at the expense of West Dallas residents who consist of a substantially higher percentage of African Americans and Latinos than Dallas as a whole.

### **A. Disparate impacts suffered by West Dallas neighborhoods**

The residents of West Dallas will disproportionately bear the harmful impacts of the relocated batch plant. Dallas has failed to properly address and mitigate the impacts that the new batch plant will have in West Dallas, including increased air and noise pollution, threats to area school children and residents from plant operations, and decreased property values.

#### ***1. Increased air pollution***

Relocating the batch plant to 2900 W. Commerce Street will expose its residents to increased levels of heavy industrial truck emissions due to the higher traffic flow in these communities.

In its presentation to Dallas's Economic Development Committee (EDC), Argos and WDI represented that the relocated batch plant will be better than the existing facility.<sup>32</sup> They also represented that the public benefits of the relocated batch plant will "potentially" lead to 48 more jobs, eliminate an "eyesore" and reduce plant related traffic at its current location, and will improve air quality as the relocated plant will be LEED certified.<sup>33</sup> In addition, Dallas states that the relocated plant will be LEED certified in its agreement to award Argos \$2.5 million dollars in public assistance.<sup>34</sup>

What is not discussed by Argos/WDI, nor required or requested by Dallas, is the basis for the blanket statement that it will improve air quality. Where will it be improved? How will it be

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<sup>31</sup> 42 U.S.C. § 2000d

<sup>32</sup> See Exhibit A

<sup>33</sup> *Id.* at 7, 9.

<sup>34</sup> See Exhibit G



improved? What is the degree of improvement and is it meaningful? Are these possible rather than attainable results?

Neither the materials provided to the EDC nor the subsequent agreement executed by Dallas provide even cursory attempts at oversight, compliance, or enforcement mechanisms to ensure the representations made by Argos would be fulfilled.

Argos and Dallas do not address the effects the relocation of the batch plant will have on neighborhood traffic, pedestrians, or property values, nor consider how foreseeable negative effects may be ameliorated.

The existing Argos facility at 240 Singleton is serviced by both train and a fleet of heavy trucks.<sup>35</sup> The relocated facility would require construction of an additional railway spur in West Dallas.<sup>36</sup> In addition to new railway traffic, the neighborhoods would also be forced to absorb higher traffic from Argos' fleet of trucks. The chosen relocation site is currently vacant land that has trees, shrubs, and other forms of vegetation that provide a natural barrier between the area residences and middle school, and the other industrial sites in the area.<sup>37</sup> Simply put, the area is not a verdant landscape, but it is undeveloped. As such, the construction of a new railway spur and heavy trucks will necessarily increase air pollution in the area.

Nowhere in its proposal does Argos address these issues, or offer any form of prospective mitigation to ease the burden the plant will have on the residents of West Dallas. In its agreement to grant Argos \$2.5 million dollars of public assistance, Dallas merely required that Argos operate the relocated plant for 5 years and not employ any undocumented workers.

Given the history of the neighborhoods in the area, their minority make-up, and their past exposure to air pollution, Dallas should have taken further measures to ensure the batch plant it agreed to help relocate would not cause the residents of West Dallas to disproportionately suffer harmful air pollution impacts that would accompany placing a batch plant in the middle of their communities.

## ***2. Increased noise pollution***

The increased noise impact from the relocated plant and accompanying traffic will be borne predominately by the low-income and minority population of West Dallas.

As stated above, the relocation site is currently an undeveloped plot of land.<sup>38</sup> Dallas and Argos have agreed to relocate Argos' cement batch plant to the site,<sup>39</sup> thereby transforming the vacant lot to allow for industrial manufacturing.<sup>40</sup> The area will have new construction,<sup>41</sup> new

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<sup>35</sup> See Exhibit A at 7 ("plant's aggregate stone is brought to its current location by rail") and p. 9 ("Argos committed to convert its truck fleet...").

<sup>36</sup> *Id.* at 7 ("New location is not currently serviced by rail...").

<sup>37</sup> See Exhibit B

<sup>38</sup> *Id.*

<sup>39</sup> See Exhibit G

<sup>40</sup> See Exhibit H

<sup>41</sup> See Exhibit G at 4 and Exhibit A at 9

train tracks,<sup>42</sup> and more truck and train traffic.<sup>43</sup> These actions are sure to introduce more noise pollution into the area.

Nothing in the materials provided to the EDC or the agreement executed by Dallas mentioned any measures to address and mitigate the noise impacts that would accompany the relocation of the batch plant on the area residents.

### ***3. Harm to children and school staff***

The traffic, air pollution, and noise pollution that will accompany the relocation of the batch plant will affect the students and staff at Thomas A. Edison Middle Learning Center.

The lead resting in the Superfund site adjacent to the middle school where the batch plant will be relocated was once described as the “largest lead-contaminated site in the United States.”<sup>44</sup>

West Dallas residents are concerned whether constructing and operating the relocated batch plant will disturb the lead-contaminated soil at the site. Dallas has offered the residents no response. Although debate exists regarding standards by which to measure lead exposure in children,<sup>45</sup> it is clear that disturbing lead from its resting place increases the risk of exposure.<sup>46</sup> What is not legitimate about questioning the risk of disturbing a location known to be the largest lead-contaminated site in close proximity of where children learn and play and where families work and live?

Thomas A. Edison Middle Learning Center is located less than 500 feet from the relocation site for the batch plant.<sup>47</sup> The roads closest to the middle school are Singleton, N. Westmoreland, W. Commerce, Akron, Bedford, Kingsbridge, Manila, Pointer, and Westerfield.<sup>48</sup> Of these, only N. Westmoreland and Singleton have more than two lanes in either direction of traffic.<sup>49</sup> The relocation site is located on W. Commerce, but traffic would use either N. Westmoreland to access Interstate 30 or Interstate 35, or Singleton to access State Highway 366 and its connections.<sup>50</sup> Both of these routes would require heavy trucks to regularly run through an area within a quarter mile of the middle school.<sup>51</sup>

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<sup>42</sup> See Exhibit G at 4 and Exhibit A at 9

<sup>43</sup> See Exhibit A at 7-9

<sup>44</sup> See <http://oakcliff.advocatemag.com/2015/11/city-to-move-west-dallas-concrete-plant-next-to-superfund-site/>

<sup>45</sup> See <http://www.dallasnews.com/burdenoflead/20121214-the-burden-of-lead-west-dallas-deals-with-contamination-decades-later.ece>

<sup>46</sup> *Id.*

<sup>47</sup> See Exhibit B

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



Unfortunately, West Dallas residents recently experienced tragedy when three children were killed in an accident just down Singleton from the middle school.<sup>52</sup> The relocation of the batch plant would cause a fleet of trucks be routed through the area near the middle school.<sup>53</sup> Adding more traffic to an already busy area, without adequate mitigation, is a recipe for disaster.

Dallas plans to gentrify the Trinity Groves neighborhood where the existing Argos site is now posing as an “eyesore” and source of irritation are a foregone conclusion. Argos/WDI are by all accounts the private entities destined to own the development and provide the construction materials that are the means to that end.

What is the true cost of the relocation plan on the lives of West Dallas adults and children? Surely they have the right to obtain substantive answers before their tax dollars go to work for the prosperity of the City of Dallas.

#### ***4. Decreased property values***

Relocation of Argos will cause residential property values to diminish, result in the area’s relapse into an industrial wasteland, and adversely affect the availability of low-income housing Dallas.

Argos/WDI briefing material to the Dallas Economic Development Committee states that the existing Argos buildings are viewed as an “‘eyesore’ and are incompatible with redevelopment efforts in the area.”<sup>54</sup> As such, relocation would result in converting Argos real estate on Singleton Boulevard into a site that would “include a mixture of hotel, office and/or residential uses with a total estimated investment of \$175M to \$225M.”<sup>55</sup>

Presently, the Dallas Housing Authority operates the Kingbridge Crossing, a development that provides affordable housing to West Dallas residents.<sup>56</sup> The Texas Department of Housing and Community Affairs funds several other properties to provide affordable housing to low income residents of West Dallas, including two properties geared toward low income senior citizens.<sup>57</sup> All of these properties are located with a half mile radius of the relocation site for the batch plant.<sup>58</sup>

Stock of affordable housing for West Dallas residents was devastated the last time the relocation site hosted an industrial plant.<sup>59</sup> For example, Dallas Housing Authority was not able to build new affordable housing in West Dallas until the late 1990s.<sup>60</sup>

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<sup>52</sup>See <http://www.wfaa.com/news/local/dallas-county/one-killed-others-seriously-injured-in-west-dallas-accident/106791887>

<sup>53</sup> See Exhibit A at 9

<sup>54</sup> *Id.* at p. 8.

<sup>55</sup> *Id.* at p. 9.

<sup>56</sup> See Exhibit I

<sup>57</sup> See Exhibit J

<sup>58</sup> See Exhibit B

<sup>59</sup> See <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0602297>

<sup>60</sup> See Exhibit I; and <http://www.dallasobserver.com/news/dallas-honored-for-housing-poor-people-on-former-superfund-site-7783908>

The existing Argos facility has been described as an “eyesore” that needs to be moved so that the area it is currently located in can be developed.<sup>61</sup> As detailed below, Dallas eagerly played an active role in facilitating this move. However, Dallas fails to consider the effect this “eyesore” will have on the property values and development in the neighborhoods of West Dallas where it is being sited.

An “eyesore” for Trinity Groves gentry is apparently perfectly suited for children of Thomas A. Edison Middle Learning Center and their West Dallas neighborhood.

Despite its awareness of the disparate and adverse impact to the low income and majority minority neighborhoods of West Dallas, Dallas has not taken any steps at mitigating the foreseeable harm that will be caused by the relocation of the batch plant.

## **B. Inadequate public participation**

Adequate and meaningful public participation is key to complying with the nondiscrimination requirements of Title VI. Dallas has taken multiple steps to assist in the relocation of the batch plant with inadequate procedures in place to assure meaningful public participation by the residents of West Dallas.

### ***1. City’s development deals***

Dallas has regular City Council meetings every Wednesday at 9am in City Hall at 1500 Marilla, in downtown Dallas.<sup>62</sup> Briefing meetings are held on the first and third Wednesdays of each month, and voting meetings are held on the second and fourth Wednesdays.<sup>63</sup> These meetings are always downtown and held during the work week during working hours,<sup>64</sup> which limits the ability of any resident to meaningfully participate.

Here Dallas engaged in a multiyear staggered campaign to relocate the batch plant as part of its larger goal to redevelop the area known locally as “Trinity Groves”<sup>65</sup> as part of the Gateway Project.<sup>66</sup> The meetings where Dallas approved agreements that resulted in the vote to relocate the batch plant were all held between 9:02am and 5:26pm.<sup>67</sup> Although Dallas’s meetings themselves are broadcast using various media,<sup>68</sup> the meeting agendas are irregularly posted publicly in advance of the meetings.<sup>69</sup> Though the posting of meetings technically complies with the minimum requirements of Texas law,<sup>70</sup> the lack of more advance notice for City meetings effectively prevented residents from discovering Dallas’s plans to relocate the batch plant until the

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<sup>61</sup> See <http://cityhallblog.dallasnews.com/2015/10/concrete-plant-next-to-trinity-groves-finds-a-new-home-paving-the-way-for-long-rumored-hotel.html/>

<sup>62</sup> See Exhibit K

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See Exhibit L at 16-23; Exhibit M at 79-83; Exhibit G at 1-5

<sup>66</sup> See Exhibit A

<sup>67</sup> See Exhibits N, O, and P

<sup>68</sup> See Exhibit K

<sup>69</sup> *Id.* at 1; Exhibit Q; Exhibit R

<sup>70</sup> *Tex. Gov’t Code* §551.43(a)

last moment.<sup>71</sup> The agenda for the October 28<sup>th</sup> meeting that provided the final nail in the coffin was publicly posted on October 16<sup>th</sup>, a mere 12 days in advance of the vote to subsidize the relocation of the batch plant to West Dallas.<sup>72</sup> Without full insider knowledge of the big picture, it was impossible for residents of West Dallas to be able to participate in any meaningful way in Dallas's public hearings where these deals were considered and voted on.<sup>73</sup> These actions by Dallas discriminated against the residents of West Dallas by effectively making it infeasible for them to meaningfully participate.

## 2. City's rezoning process

Dallas also used its "role in local economic development"<sup>74</sup> to push Argos' general zoning change (GZC) application for the relocation site in order to facilitate the move of the batch plant.

As part of the rezoning process, Dallas's notice procedures were inadequate to provide the residents of West Dallas with any meaningful notice of the proposed change in land use in their neighborhood. Dallas only required that Argos post two signs on an almost 10 acre piece of property only visible from a sparsely populated street ten days in advance of the initial City Planning Commission (CPC) meeting.<sup>75</sup> It's not clear what methods Dallas took to ensure that the posting requirements were actually complied with. However, it is clear that once Argos submitted its application to re-zone the relocation area, the CPC worked closely with it to get their application to the CPC scheduled public hearing.<sup>76</sup>

During the application process, GZC applications are subject to CPC staff review and recommendations.<sup>77</sup> Notably, the CPC staff recommended that the Argos GZC application for the relocation site be *denied*.<sup>78</sup> However, the CPC still held a public meeting to consider the application.<sup>79</sup> CPC meetings are also scheduled during the work week and working hours for the "convenience" of Dallas residents.<sup>80</sup> Here, Argos's application was heard at the CPC meeting on *Thursday*, April 10, 2015 at 1:30 p.m.<sup>81</sup> Months later, the same application was approved by a City Council that was in the midst of changing membership.<sup>82</sup>

A mere 10 days prior to holding either of these hearings, Dallas requires notice to be mailed out to property owners in the notification area.<sup>83</sup> However, given the nature of the batch plant's operations and the history of environmental discrimination faced by the residents of West Dallas,

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<sup>71</sup> See <http://cityhallblog.dallasnews.com/2015/11/residents-urge-city-to-reconsider-moving-west-dallas-cement-plant-near-school.html/>

<sup>72</sup> See Exhibit R

<sup>73</sup> <http://northdallasgazette.com/2015/12/08/west-dallas-residents-plan-to-fight-relocation-of-argos-plant/>

<sup>74</sup> See Exhibit G at 1

<sup>75</sup> See Exhibit S at 8

<sup>76</sup> *Id.* at 3

<sup>77</sup> *Id.* at 2

<sup>78</sup> See Exhibit H

<sup>79</sup> *Id.*

<sup>80</sup> See Exhibit T

<sup>81</sup> See Exhibit H

<sup>82</sup> *Id.*; and <http://cityhallblog.dallasnews.com/2015/10/dallas-will-spend-2-5-million-to-help-trinity-groves-cement-plant-move-near-middle-school.html/>

<sup>83</sup> See Exhibit S at 2



merely mailing notice to property owners within the 400 feet notification area was woefully inadequate.<sup>84</sup> As the relocation site is the same former lead smelter and current Superfund Site, a majority of the property owners within 400 feet are business.<sup>85</sup> Even still, a number of property owners responded in opposition to the CPC to Argos's GZC application.<sup>86</sup> This process repeated itself when Argos' GZC application was considered by City Council.<sup>87</sup>

If these actions were not bad enough, a review of the notification lists for both the CPC and City Council reveals that notice was not sent to the correct address for Dallas Independent School District (DISD), which owns and operates Thomas A. Edison middle school.<sup>88</sup> The fact that DISD didn't receive adequate notice of the change was driven home by DISD stating that while they were aware of the zoning change generally, it was unaware of the specifics involved with siting a batch plant less than 500 feet from one of its campuses.<sup>89</sup> Moreover, the vote to subsidize the batch plant move came just days before a DISD bond package, that included infrastructure improvements for Thomas A. Edison Middle Learning Center, was to be voted on.<sup>90</sup> This has left the middle school in a lurch, with DISD now considering how to move forward with an industrial plant at its back door.<sup>91</sup>

Overall, Dallas's actions perpetuate the government's history of discrimination against the low income majority minority neighborhoods of West Dallas. Rather than provide adequate opportunity for meaningful participation for West Dallas residents, Dallas engaged in a multiyear tact of smoke and mirrors in the name of "development." A long suffering resident of West Dallas put it simply, "what they [Dallas] need to understand is there's a voice here that's not being heard and it's the poor people."<sup>92</sup>

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<sup>84</sup> See Exhibit U

<sup>85</sup> See Exhibit V

<sup>86</sup> See Exhibit W

<sup>87</sup> See Exhibits X and Y

<sup>88</sup> See Exhibit W and X

<sup>89</sup> See <http://cityhallblog.dallasnews.com/2015/10/29/dallas-will-spend-2-5-million-to-help-trinity-groves-cement-plant-move-near-middle-school.html/>

<sup>90</sup> *Id.*

<sup>91</sup> See <http://legacy.wfaa.com/story/news/2015/10/29/disd-weighs-future-of-school-after-concrete-plant-vote/74838030/>

<sup>92</sup> See <http://www.nbcdfw.com/news/local/Concrete-Plant-to-Move-After-Sharply-Divided-Dallas-Council-Vote-338134412.html>

**VI. EPA, HUD, and DEPED should take all necessary steps to correct Dallas's violations of Title VI**

For the reasons set forth above, Dallas is not in compliance with Title VI of the Civil Rights Act of 1964. Accordingly, the EPA, HUD, and DEPED may use any means authorized by law to obtain compliance with Title VI.

As such, complainants on behalf of themselves and all West Dallas residents, request the EPA, HUD, and DEPED take all necessary steps to ensure that Dallas comes into full compliance with the requirements of Title VI regarding this matter.<sup>93</sup> If necessary, such steps should include, but not be limited to, launching an investigation, discontinuing all present and future federal funding to Dallas, requiring Dallas to take any and all necessary steps to comply with Title VI in the future and in this matter and referring the matter to the U.S. Department of Justice for further investigation.<sup>94</sup>

Thank you for your prompt attention to prevent further discrimination related to the relocation of the batch plant into West Dallas. Please let us know if we can provide any additional information to assist the EPA, HUD, or DEPED in addressing these serious concerns.

Sincerely,

LEGAL AID OF NORTHWEST TEXAS

**Ex. 6, 7c**

Amir Befroui  
Attorney at Law

**Ex. 6, 7c**

Claudia M. Cano  
Attorney at Law

Enclosure

cc: Ex. 6, 7c  
Ex. 6, 7c

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<sup>93</sup> See 40 C.F.R. § 7.130; 24 C.F.R. § 1.8; 34 C.F.R. § 100.8

<sup>94</sup> See 40 C.F.R. § 7.130; 24 C.F.R. § 1.8; 34 C.F.R. § 100.8

IPASS, INC.

September 21, 2016

U.S. Department of Education (USDOE)  
OCR National Headquarters  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

U.S. Department of Education (USDOE)  
OCR Regional Atlanta Office  
Office for Civil Rights  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T10  
Atlanta, GA 30303-8927  
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FAX: 404-974-9471; TDD: 800-877-8339  
Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)

US EPA Office of Environmental Justice  
[environmental-justice@epa.gov](mailto:environmental-justice@epa.gov)  
Environmental Protection Agency [Mail Code 2201A]  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

US EPA, REGION 4  
Cynthia Peurifoy ([peurifoy.cynthia@epa.gov](mailto:peurifoy.cynthia@epa.gov))  
61 Forsyth Street (9T25)  
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Office of Civil Rights  
Helena Wooden-Aguilar ([wooden-aguilar.helena@epa.gov](mailto:wooden-aguilar.helena@epa.gov))

**Title VI Complaint**

**Lee County School District: High School Siting at Imperial Parkway Bonita Springs,  
Florida**

Dear U.S. Department of Education Office for Civil Rights:

We represent IPASS, Inc. a Florida Not for Profit Corporation. IPASS alleges that the Lee County School District (LCSD), a recipient of financial assistance from the USDOE, has violated Title VI of the Civil Rights Act of 1964 (Title VI) that will have a disparate discriminatory impact on students of color and race by siting a new Title I high school that has predominantly (more than



50%) Hispanic and Black student population in Bonita Springs Florida on a parcel of land that is contaminated by asbestos and diesel fuel, and the site is also located next to an extremely high-volume traffic roadway, federal Interstate I-75 generating additional air pollution.

LCSD receives federal funds from Title I, Part A (Title I) of the Elementary and Secondary Education Act (ESEA) provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families.

Placing a new school that will serve a student class population of predominantly (greater than 50%) Hispanic and Black students on a contaminated site is a discriminatory act based on race and color. The new high school will serve the following current student population:

**Statistics for 2014-2015<sup>1</sup>** (statistics for 2015-16 not available yet)

Bonita Springs Elementary

Hispanic: 93.9%

Economically Disadvantaged: 97.2%

Spring Creek Elementary

Hispanic: 82%

Economically Disadvantaged: 89.3%

Bonita Middle Center for the Arts

Hispanic: 61.3%

Economically Disadvantaged: 75.3%

Bonita Springs Preparatory and Fitness Academy:

Hispanic: 46.4%

Economically Disadvantaged: 60.5%

Bonita Springs Charter School

Hispanic: 35.6%

Economically Disadvantaged: 49%

Statistics for Lee County - 2015-16

White: 42.6%

Hispanic: 38.2%

Black: 14.6%

Two or More Races: 2.7%

Asian: 1.7%

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<sup>1</sup> <http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1415/main1415.cfm>  
[http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1415/schl1415.cfm?dist\\_number=36](http://doeweb-prd.doe.state.fl.us/eds/nclbspar/year1415/schl1415.cfm?dist_number=36)  
total number of students in Bonita Springs 3,714  
total number of minority students in Bonita Springs 2,307

Siting the new high school on the Imperial Parkway site would expose the predominantly minority student population to additional pollution and health risks.

This is a discriminatory act and violates Title VI and USDOE's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability), EPA's Title VI regulations, 40 C.F.R. Part 7, and the U.S. Department of Education's (USDOE) Title VI regulations, 34 C.F.R. Part 100.

The Title VI regulations prohibit, among other things, race, color or national origin discrimination in school siting decisions. As noted in EPA Schools website, "Children are particularly sensitive to air pollution, because their respiratory systems are not fully developed, they are more active, and they breathe more rapidly than adults. Children also are more likely than adults to have asthma."

The selection of this school site, upon which evidence of prior contamination exists, and the assessment and remediation of contamination at this site stem from two deficiencies:

1. *Inadequate due diligence on the part of school districts.*

Without the involvement of lending institutions in acquiring property for school construction, school boards have less incentive to perform rigorous due diligence. By requiring site investigations as a condition for loans on acquiring property, banks and other lenders have served as de facto environmental detectives. To protect their own investments and to avoid liability, lenders have played a key role in the discovery of contaminated properties, helping to ensure that proper site characterization and cleanup are carried out. But in recent cases in Chicago and Los Angeles, the acquisition of property for schools was funded by public money, without the involvement of lending institutions. **It would appear that due diligence was not conducted with the same scrutiny as would be the case in private property transactions.**

2. *School district self-certification of remediation cleanup.*

A major flaw in the system is when school districts have both the responsibility and authority for cleaning up site contamination and for certifying that the cleanup has been properly completed before the school facility is constructed. School districts often do not have expertise in site assessment and cleanup, and there may well be conflicts of interest within the school district. As a recent California audit documented, pressures to get a school up and running to meet enrollment needs may influence how contaminated sites are characterized, **leading to less stringent cleanups.**

This complaint is timely. The contaminated Imperial Parkway site was selected from a list of other (non-contaminated) school sites by the LCSD within the last 180 days, but to our knowledge the real estate contract for the purchase and sale of the site has either not yet closed or only recently closed. The school has not yet been constructed.

The site has not been adequately tested for these and other potential contaminants and the testing that was conducted was incomplete. State of Florida Department of Environmental Protection records are incomplete. Subsequent recent site assessment testing for asbestos materials was not

adequate to ensure that the site has been fully remediated. There has been insufficient state and federal oversight of assessment and remediation activities on the site. A report titled *Soil Assessment Report Imperial Parkway Property* dated July 4, 2016 was prepared by the same consulting firm that performed a Phase I Environmental Site Assessment (Phase I ESA) in November 2015, the consulting firm was again hired directly without a proper selection procedure by the School Board. This July 4, 2016 Report utilized and described a methodology for soil sampling that is not adequate to assess potential asbestos contamination.

The consulting firm that performed a “practical sampling plan” was improperly constrained under a very limited budget provided by the School Board, relied on its own inadequate Phase I ESA site reconnaissance activities, and did not perform a thorough visual inspection of the entire property.

The attached sworn statement from a Spanish speaking worker who was employed during the assessment of asbestos materials that indicates that the asbestos materials may exist in other locations on the site. In light of the known asbestos that was present on the property, the site selection assessment and documentation were inadequate to protect students. Both the phase I and phase II report was inadequate under ASTM Environmental Audit standards. No phase III environmental audit has been conducted or requested by the School Board prior to the site selection of this contaminated site next to a major highway generating high volumes of traffic and additional air pollutants.

According to the Soil Assessment Report, no obvious cementitious pipe or pipe fragments or other potential asbestos-containing material (ACM) were observed during the Phase I ESA. In the Phase II ESA, samples were collected in a general grid pattern that divided the site into twelve sections. The soil sampling methodology implemented encompassed a random collection of soil samples from the surficial layer from each section and laboratory analysis of 12 composited samples from a property that is 76 acres in size. This is roughly only one analyzed sample for every six acres of land, and clearly inadequate given the circumstances.

Moreover, no special assessment emphasis (no test pits greater than 6” with sampling or additional sampling was) was given to areas previously documented as impacted with ACM. Additional investigation should have been conducted in the three areas where the burial and piling of ACM occurred. The scope of the soil assessment applied the same level of scrutiny in the areas that were previously documented as impacted as in the areas that were not previously documented as impacted with asbestos. The soil sampling methodology for assessment of ACMs should not have focused on discrete sample locations. A few surficial soil samples, even if properly composited and analyzed, cannot fully represent surface, subsurface or air environmental conditions.

The School District of Lee County should have, but did not, notice a request for proposals to interested bidders (consultants) with a detailed scope of work to adequately assess the property. Public sector procedures to conduct environmental assessment work should be transparent, thorough and open to the public in order. This process was not. When counties or governmental agencies are truly interested in finding out what the true environmental conditions are on real estate properties, they commonly rely on one consultant to design a scope of work that can meet the objectives for the purchase, and then, on yet other independent consultant chosen through open bidding process to complete the implementation of a well-designed scope of work that is vetted through state and federal regulatory oversight, not unilateral self-regulation by the LCSD.



The first rule of environmental site assessment for contaminated sites is to obtain a full three dimensional (vertical and horizontal) assessment as to the extent of contamination. Originally, only a phase 1 paper environmental audit was performed here. A full phase II or phase III environmental audit was not performed, even for asbestos, much less any other potential contaminants for the entire parcel. No full vertical site assessment to depths of more than 6" or horizontal assessment of, and throughout, the entire parcel, and no full site rehabilitation completion order from DEP or EPA for full clearance of the site has been obtained to our knowledge.

Prior to selection and use of contaminated sites for the proposed school, guidance should have been sought from State and Federal regulators and other stakeholders. A comprehensive site assessment including a Conceptual Site Model (CSM) is necessary and proper for a school site. The CSM would have taken into consideration the past, present and future use of the site as it is a representation of site related information of contamination sources, receptors and exposure pathways. The CSM of a comprehensive site assessment would have provided a framework for identifying how potential receptors such as workers during construction and school children may be exposed to remaining asbestos or other contaminants in the present or in the future.

The United States Environmental Protection Agency provides a framework for investigating and characterizing potential for human exposure from asbestos contamination in outdoor soil and indoor dust at contaminated sites. Due to the scientific and technical issues associated with the investigation of human exposure and risk from asbestos, a framework for a comprehensive site assessment should be used by risk assessment managers when performing investigations of asbestos sites. In addition to soil, a combination of dust and air samples has to be analyzed to fully characterize exposure.

The School District and School Board must understand that asbestos fibers in outdoor soil released from source materials, including remnants of asbestos materials, have the potential for inhalation. Inhaled asbestos can increase the risk of developing illnesses such as lung cancer, mesothelioma, pleural fibrosis, and asbestosis. These risks of airborne pollution are compounded by the nearby high-traffic federal interstate highway I-75 which also generates air pollution in close vicinity to the proposed school site on Imperial Parkway.

Based on the exposure to asbestos and other hydrocarbon contaminants and air pollutants, the subject site should not be considered a potential school site regardless of a comprehensive contamination assessment which will have limitations and risks that have not been fully assessed.

According to a 2005 report titled *Building State Schools: Invisible Threats, Visible Actions* by the Child Proofing Our Communities Campaign and Center for Health, Environment & Justice, Florida is a state with school siting laws and one of only five (5) states with a policy that prohibits a school district from using a certain site for a school location due to health and safety concerns with regard to point sources of pollution, prior land uses and other general environmental conditions.

On February 11, 1994, Executive Order 12898 was issued to direct Federal agencies to incorporate the achievement of environmental justice into their mission. Accompanying that Executive Order was a Presidential Memorandum stating, in part:

"In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the

environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”

Presidential Memorandum to Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

In August 2011 the Environmental Justice Internal Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities.

As noted above, the site has not been adequately tested for these and other potential contaminants, and the testing that was conducted was incomplete.

The attached sworn statement from a Spanish speaking worker who was employed during the assessment and remediation of asbestos materials from the soil indicates that the asbestos materials may exist in other locations on the site, and has not been fully remediated. Federal OSHA complaints during the site assessment and remediation for asbestos can no longer be located by Lee County. Subsequent recent site assessment testing for asbestos materials was not adequate to ensure that the site has been fully remediated.

Respectfully submitted,

/s/ **b(6) Privacy**  
Attorney for IPASS, INC.  
**b(6) Privacy**  
1217 E Cape Coral Parkway #107  
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Ex. 6, 7c  
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Phone **b(6) Privacy**  
Fax **b(6) Privacy**

July 7, 2016

b(6) Privacy

**Subject: Hawthorne Property/Imperial Parkway  
AirQuest Project #11068**

Dear b(6) Privacy:

AirQuest Environmental, Inc. ("AirQuest") reviewed a map indicating the latest sampling locations at the Hawthorne property at Imperial Parkway. The map seems to indicate a grid system used as part of a sampling plan for the collection of samples for asbestos and petroleum hydrocarbon analysis at the subject property. The map provided sufficient information to indicate that samples would be collected only from the surface; a limited number of samples (five samples) from each of the twelve cells of a grid system for a total of sixty (60) samples, and a plan to have the samples composited, not in the field, but at the laboratory.

This sampling plan does not adequately assess asbestos concerns at the site, which is primarily accomplished by a thorough visual inspection of the entire property and does not focus on discrete soil sampling locations. A few surficial soil samples, even if properly composited and analyzed, cannot properly represent surface or subsurface environmental conditions.

Additionally, due to the piling and burial of asbestos cement piping and potential disturbance of soils during an abatement conducted at the subject property, it is important to determine if asbestos is present in the soils at depths greater than surficial levels (surface to 3 and sometimes 6 inches of depth). Based on the documents reviewed, a comprehensive site characterization was not conducted. Although additional detailed information as to the purpose of this latest sampling may have accompanied the map, the map itself seems to indicate that it is for confirmatory purposes.

For sites such as this proposed school site, guidance must be sought from professionals and from State and Federal regulators and other stakeholders. It is important to develop a Conceptual Site Model (CSM) that takes into consideration the past, present and future use of the site as part of a comprehensive site assessment. A CSM is a representation of



site-related information regarding contamination sources, receptors and exposure pathways. The CSM will provide the framework for identifying how potential receptors may be exposed to asbestos or other contaminants in the present or in the future. Also, since there will be activities during potential construction at the site (e.g., excavation, trenching), Activity-Based Sampling (ABS) and Stationary Sampling are recommended assessment practices for assessing short and long term exposures associated with workers during construction and later students and residents of the adjacent areas.

Should you have any questions or require additional information, please do not hesitate to contact either myself, or Traci Boyle at (954) 792-4549.

Sincerely,  
AirQuest Environmental, Inc.

A handwritten signature in blue ink, appearing to read 'Sid Duque'.

Sid Duque, PG  
Senior Project Manager

A handwritten signature in blue ink, appearing to read 'Traci-Anne Boyle'.

Traci-Anne Boyle, CIH  
Licensed Asbestos Consultant, AX-60



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## LOCAL NEWS

# DEP investigating possible asbestos violations by construction company

By Charlie Whitehead

Posted: Dec. 26, 2007

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Posen Construction workers say they were ordered to handle hazardous asbestos pipe without protective gear and then ordered to dump it illegally at a new lake south of Alico Road.

In sworn statements Posen employees and former employees say their jobs were threatened if they refused to handle the dangerous material.

"If we question the instructions there are plenty of people looking for truck driving jobs," said truck driver Virginia Brown in a sworn statement taken in November.

Brown heard that from crew leader Linda Darnall, she said, who swore she got the instruction from her boss, Michael Schook.

"They've harassed the hell out of me," said Darnall, who claimed she was terminated after she complained and went for lung X-rays and tests.

"People are sick. People are being harassed. People are being fired. I am livid."

Other Posen workers said they were instructed to cut up the asbestos pipe with saws and crush it.

"There were lots of dust particles in the air," said Jonathan Herman.

The workers said they were not offered protective gear. Asbestos is a fiber that when inhaled can cause long-term breathing problems. Crushing or cutting it creates an airborne hazard. It's also a hazardous material requiring specific disposal procedures.

Herman said he was spotting for an equipment operator who removed the pipe from the ground.

The various statements claim the pipe, owned by Lee County Utilities and removed during the widening of Alico Road near U.S. 41, was crushed and cut up at the site. Truck drivers claim they were ordered to dump the material at a newly created lake south of the new Alico Road near 41, and that equipment operators pushed the asbestos into the lake.

Department of Environmental Protection officials confirmed they are investigating, and sent warning letters to Posen, Lee County and the Florida DOT before Christmas advising of possible violations of the law.

"We have investigated and we have sent the warning letter," DEP spokeswoman Audrey Wright said. "They have replied and asked for a meeting after the holidays."

During that meeting more investigating will take place, DEP's Sherrill Culliver said.

"The letter states a possible violation," he said. "We're not in a position to say there is or isn't."

Lee County officials got interested when Posen employees took their complaints to them.

"Every day phone calls come in about something," said Tony Pellicer of the water resources division. "I read the statements, but I wasn't there. I do know Posen subsequently instituted asbestos-handling training. They didn't have it before."



Schook was arrested in August as a fugitive from Michigan, wanted for six felony counts of violating water protection rules. In September he was charged with similar violations here and paid a \$500 fine. Those charges stemmed from Bonita Springs complaints of improper stormwater handling at the Imperial Parkway job.

"My guys were exasperated," Bonita City Manager Gary Price said. "We're watching them constantly."

Price said his engineers tell him there's asbestos buried on the south side of the Imperial River where Posen built the embankment for the new bridge.

"My guys say it's some of the Alico stuff," he said.

Pellicer said Schook was convicted in February of environmental degradation in Michigan, and was fined for improper handling of asbestos.

Schook could not be reached for comment. Lloyd Lambrix, Posen's southwest Florida division manager, declined comment.

"I'm on vacation now," he said. "We're shut down for Christmas. Call the county or someone. I don't want to comment right now."

Pellicer said the county knew the old asbestos utility lines were there, and Posen's contract included removal and proper disposal. He said when the employee complaints reached him he requested copies of disposal receipts for the asbestos. Though the county had paid for the removal several months earlier the disposal receipts were dated after the request was made.

"It got to the point I said this is for DEP," he said.

Jim Lavender, the county public works director, laid out the situation in a report for commissioners this week.

"We intend to watch them very carefully," he said. "I'd say they have things they have to answer for." Nevertheless Posen is in line for yet another big county contract. The company is the low bidder ? by several million

dollars ? with a \$25 million offer to widen Summerlin Road and build a new overpass at College Parkway.

"I asked the attorney," Lavender said."He said there was no problem and I signed off on the blue sheet. They've been quick and they've been cheap."

Darnall said Posen looked for reasons to fire her, even removing her from her truck and ordering immediate drug testing, which she passed, she said. She was fired after an accident in a company vehicle. She said she's contacted Occupational Health and Safety Administration about the working conditions and has equal opportunity complaints pending.

"I'm so mad. I picked up and moved down here from Michigan to help this company get started here," she said. "I don't care if my name gets out. They've already done to me what they can do."



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1  
2 IN RE:

3 ASBESTOS

4 \_\_\_\_\_/  
5 EXAMINATION UNDER OATH OF: b(6) Privacy [REDACTED] [REDACTED]

6 DATE: June 24, 2016

7 TIME: 5:50 p.m. to 6:48 p.m.

8 LOCATION: 16175 Old US 41  
Fort Myers, Florida 33912

9 TAKEN BY:

b(6) Privacy [REDACTED] [REDACTED]

10 REPORTER: Christi K. Cole,  
11 Certified Professional  
Court Reporter

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22 \_\_\_\_\_  
23 ACCURATE REPORTERS, LLC

(239) 245 8695

24 1617 HENDRY STREET 5659 STRAND COURT

Suite 306 Suite 109

25 Fort Myers, FL 33901 Naples, FL 34110



(b)(5) Privacy [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

DEBRA FOSSELMAN  
KATHERINE ORTEGA (Spanish Interpreter)

## I N D E X

WITNESS :

PAGE :

b(6) Privacy [REDACTED] [REDACTED]

EXAMINATION (Through Interpreter)

4

BY b(6) Privacy [REDACTED]

EXHIBIT	DESCRIPTION	PAGE :
Exhibit No. 1	Asbestos Certificate	5
Exhibit No. 2	Site Map	5
Exhibit No. 3	Photograph	5
Exhibit No. 4	Photographs	14
Exhibit No. 5	Photographs	16

1 THEREUPON,

2 KATHERINE ORTEGA,

3 was duly sworn to act as interpreter and to accurately  
4 translate from the English language to the Spanish  
5 language all questions propounded to the following  
6 witness and to accurately translate from the Spanish  
7 language to the English language the answers to such  
8 questions.

9 THE INTERPRETER: I do.

10 \* \* \* \* \*

11 THEREUPON,

12 b(6) Privacy ██████████ ██████████,

13 having been first duly sworn through the  
14 aforementioned interpreter, upon his oath, testified  
15 as follows:

16 THE WITNESS: Yes.

17 EXAMINATION (Through Interpreter)

18 BY MR. BROOKES:

19 Q Okay. What is your full legal name?

20 A b(6) Privacy ██████████ ██████████ ██████████.

21 Q Okay. Is this a copy of your asbestos  
22 certification?

23 A Yes.

24 MR. BROOKES: I'm going to mark it as Exhibit  
25 Number 1.



1 (Exhibit No. 1, Asbestos Certificate, was  
2 marked or identification.)

3 BY MR. BROOKES:

4 Q Okay. And do you recognize this location?

5 A Yes.

6 MR. BROOKES: I'm going to mark that as  
7 Exhibit Number 2.

8 (Exhibit No. 2, Site Map, was marked or  
9 identification.)

10 BY MR. BROOKES:

11 Q And did you ever work at that location?

12 A Yes.

13 Q When did you work there?

14 A I started around August the 4th. I was in  
15 2009. I was there for a few months, but I don't  
16 recall exactly or how many.

17 Q And in what part of the site did you work?

18 I you could circle with a pen the general locations.

19 A In that area.

20 Q Okay. And is this a close up photograph of  
21 that area?

22 A Yes.

23 MR. BROOKES: I'll mark that as Exhibit  
24 Number 3.

25 (Exhibit No. 3, Photograph, was marked or

1           identi ication.)

2       BY MR. BROOKES:

3           Q       And what was your job in this location?

4           A       Our work there was just to ind asbestos,  
5       just to ind out i the area was contaminated or not.

6           Q       And was part o your job, then, to remove  
7       asbestos that you ound?

8           A       Yes, because they were determined to ind out  
9       i there was a contaminated area there. And we had to  
10      remove pieces o asbestos.

11          Q       Was the area with the asbestos marked?

12          A       No, we were just digging out o you know,  
13      out o scratch. We didn't have any any idea. We  
14      was just rattling and just looking, seeking di erent  
15      areas until we could ind, you know

16          Q       Were you told

17          A       pieces o

18          Q       to stay within

19          A       pieces o stu .

20          Q       one area or your work?

21          A       Yeah. The thing is that we had a speci ic  
22      area where, supposedly, there were the remains o  
23      you know, the pieces that they knew there was an  
24      area, speci ic area, where, supposedly, you know,  
25      there was contamination in it.

1 Q Was the area staked out?

2 A Not at the very beginning when we first got  
3 there.

4 Q Okay. Could you draw with this pen on  
5 Exhibit 3 the area that you were working within to  
6 look for asbestos?

7 A At the beginning, we started like in this  
8 area around here; and then we started to kind of  
9 spread out a little bit to see how far. But we  
10 concentrated our work in this central area.

11 Q Did you ever leave the central area and  
12 notice asbestos anywhere else on the property?

13 A Yes, of course. Well, sometimes, yeah, they  
14 would just tell us to look around, and sometimes it  
15 just we would do it like, you know, or un, or to  
16 get like a free lunch or something. And I, myself,  
17 found quite a good amount of asbestos around.

18 Q Where on this aerial, maybe could you show  
19 me on the aerial where you found asbestos in other  
20 locations on the property?

21 A This this area right here. The outer  
22 side, here and here.

23 Q Could you put an A next to that, and a B next  
24 to that?

25 A (Witness complies.)

1           Q       Thank you. Did you report finding asbestos  
2       in that area to anyone?

3           A       Yes, o course, the supervisor, the one that  
4       was, you know, leadering (sic) our group. One day it  
5       was raining a lot, so we had to leave. And then  
6       but we came the day a ter. And a ter the rain, we  
7       ound like, you know, the sand kind o spreads out  
8       a ter the rain, and the asbestos was pretty clear,  
9       out, like pretty much alive.

10                   It kind       kind o stands out. There's not  
11       con usion when you ind it. It has this color, kind  
12       o like this. So when it rains       when it rains, it  
13       stands out pretty easily. So it's very visible. You  
14       can see it pretty easily.

15           Q       Okay. And who was the supervisor that  
16       he (sic) told about this additional asbestos?

17           A       The one that was like our leader. Nava, I  
18       think was his last name.

19           Q       Salvador Nava?

20           A       Nava. Nava. Salavador. Salvador Nava.

21           Q       And what did they tell you about the asbestos  
22       in areas A and B?

23           A       I don't know about that, because they used to  
24       talk and meet with this (sic) inspectors that would  
25       come. On two occasions, one o the inspectors told me



1 to look or asbestos, and I brought more asbestos to  
2 him.

3 Q Did they expand the clean up area after that?

4 A What do you mean "expand"?

5 Q Did you have to clean up the asbestos in the  
6 areas marked A and B?

7 A We did not clean anything. We were just  
8 looking for asbestos. We wanted to prove that there  
9 was contamination in the area. There was another team  
10 that would come and clean. They were cleaning the  
11 area. So they would come and take care of that.

12 Q Okay. Was the asbestos that you identified  
13 in areas A and B put in any reports?

14 A I don't know. I don't think so. My my  
15 job was to just find as much asbestos as possible. So  
16 I would bring it to them; they would take pictures of  
17 it.

18 Q What instructions were you given?

19 A Our our work was just to check, check  
20 around, seek keep seeking for asbestos and make  
21 sure that they it was proved that there was  
22 asbestos there.

23 Q Were you supposed to delineate the area that  
24 had asbestos?

25 A What do you mean "delineate"?

1           Q       Were you supposed to mark the geographic area  
2 that had asbestos?

3           A       Yes, we would use some type o tape to mark  
4 it. But it was only in this area you know what I  
5 mean the area where we were working.

6           Q       Was there asbestos in other areas besides  
7 where you were working?

8           A       Yes. There was around this area here,  
9 this was a I don't know how to call it in  
10 English it was like a ditch, like a ditch.

11          Q       Could you circle that area

12          A       All o this

13          Q       with a pen?

14          A       border had asbestos, this area right here.  
15 Because there was like dirt that was kind o pushed  
16 away there. So there was like a little mound. But  
17 there was a ditch next to it.

18          Q       Okay. Anywhere else?

19          A       There was asbestos all over the place there.  
20 All this area that we worry about, there was asbestos  
21 there.

22          Q       Is it beyond these squares and rectangles  
23 that are drawn on the photo?

24          A       Yes, all this area here. All this area had  
25 asbestos.

1           Q       Okay. And how long did you work on this  
2 site?

3           A       I don't remember exactly. I know it was or  
4 a ew months, but I wouldn't be able to tell you two,  
5 three, our months. I don't know. I do remember that  
6 we stopped at some point, and I don't remember I  
7 don't know really why. It was like they were not  
8 decided what they would do over there. So when we  
9 came back, there was like a mound o dirt. There  
10 wasn't

11           THE INTERPRETER: Let the interpreter clari y  
12 something.

13           THE WITNESS: There was equipment. There was  
14 equipment there, like a backhoe, like a real big  
15 backhoe. There was a man. There was a man.  
16 There was a water trunk truck. Sorry, truck.

17           So when we came back, we came like to check  
18 i a ter that mound that they kind o ormed  
19 there, this hill, i they had picked up the  
20 asbestos or not. So our job there was to look or  
21 more asbestos. That's what we were trying to  
22 ind, more asbestos. And we did ind more  
23 asbestos.

24 BY MR. BROOKES:

25           Q       A ter the truck made the mound?

1           A       (Nodding head.)

2           Q       Again, was this all over the site, or       let  
3 me ask you not a leading question.

4                   Where did you see it a ter the truck pushed  
5 the mound up?

6           A       In the surroundings. In the surroundings o  
7 that mound. Because they wanted to know i they had  
8 le t some. And they       you know, like on the mound,  
9 there were like big pieces, like big pieces. The  
10 biggest pieces were on       like around the mound. But  
11 in the outer areas, there were little pieces.

12                   Because we have this thing       that's what I  
13 told you be ore       that i we ound additional  
14 asbestos, they would give us like a ree lunch or  
15 something. So we kind o would walk around and go  
16 outside, you know, the area.

17           Q       Okay.

18           A       We       we didn't have to bring much. We would  
19 just bring like three, our pieces, and then they  
20 would take pictures, and then

21           Q       And how much asbestos was out in these outer  
22 areas? Was there a lot, or just a little?

23           A       Yeah, because the thing is that it was       it  
24 seemed like it was like grounded, ground. It was  
25 grinded. It was ground. So there were like debris.



1 Q Like grinded?

2 A All that was

3 MR. BROOKES: Like grind like grinded?

4 THE INTERPRETER: Grinded, yeah.

5 MR. BROOKES: Like co ee?

6 THE INTERPRETER: Yeah, right, exactly.

7 MR. BROOKES: Okay.

8 THE WITNESS: So it was like debris. And  
9 they kind o grind all o this debris. You know,  
10 they become little pieces. So we could ind like  
11 bigger pieces, small pieces.

12 BY MR. BROOKES:

13 Q Okay. Was it very di icult to ind them?

14 A Yes. At least the little ones, we really had  
15 to pay attention to those. The bigger ones, you could  
16 see it pretty easily.

17 Q Okay. Were you using just naked eye, or  
18 magnifying glasses?

19 A No, just naked eye. Because there is no  
20 doubt; the color is very distinctive.

21 Q And what hours did you work? How long did  
22 you spend there on the day you were working?

23 A We would start around 7:00, 7:30. We would  
24 inish around 3:00 or 3:30.

25 Q Did you work other locations, or just this

1 site?

2 A Just there.

3 Q Okay. And who was your employer/company?

4 A I don't remember the name right now. I do  
5 remember that our leader was Salavador.

6 Q Was it Southeast Abatement?

7 A Something like that. I don't quite remember  
8 well.

9 Q Okay. Did you wear any protective equipment?

10 A No, not really. Sometimes we would wear like  
11 a white kind o jumper; but it was only when the  
12 inspectors would come. Other than that, we would not.

13 Q When would the inspectors come?

14 A Sometimes only when they would come to  
15 inspect. Almost at the end, lately, there was an  
16 inspector there almost daily, but it just was only at  
17 the end.

18 (Exhibit No. 4, Photographs, was marked or  
19 identi ication.)

20 BY MR. BROOKES:

21 Q Okay. I'm going to show you some photographs  
22 on Exhibit Number 4. And they're numbered 1  
23 through 6. Can you describe what we're seeing in the  
24 photos one by one?

25 A This is the place where we were working at.

1 This is the equipment I mentioned that was picking up.

2 This is the mound, a little house where

3 Q The mound is in number 1?

4 A Yes.

5 Q And then the house is in number 5?

6 A This is like a little house that Salavador  
7 would bring and kind o assemble there in order to be  
8 under, you know, the shade or a while.

9 Q And what did they do there?

10 A We would take breaks, and we would be  
11 under it.

12 Q And did they have to do any decontamination  
13 in that tent?

14 A No, actually, there was never a place located  
15 there or decontamination, which there should have  
16 been; but there was never such a place. They had like  
17 a small equipment like to kind o use it, but it  
18 was never done the way we were supposed to do it. It  
19 was just this was just used like to be on you  
20 know, in the shade.

21 Q Okay. And what is in picture number 4?

22 A This is like a machine to measure the air.  
23 It's not something that was there at the beginning; it  
24 was more towards the end.

25 Q Did you have to wear a machine on your body

1 to measure the air?

2 A I remember that we used that one day, yes.

3 Q One day?

4 A One day. We were wearing something right  
5 here.

6 Q Which is I think he's pointing at  
7 his (sic) shoulder?

8 A The little equipment goes here, and then you  
9 have like a hook around here.

10 Q So equipment on your belt, and then a hook on  
11 your shirt?

12 A Yes.

13 Q And that what about the other days?

14 A A ter, they started using those measuring  
15 devices.

16 Q They stopped using the personal devices?

17 A Yeah, only i i an inspector would come,  
18 then we would. But you can see in the picture that.  
19 Only i the inspector would come, and we had to kind  
20 o measure something, make some test, then we would  
21 wear it. But, or example, right here, we're working  
22 and we we don't have anything.

23 (Exhibit No. 5, Photographs, was marked or  
24 identi ication.)

25 BY MR. BROOKES:



1 Q Is this these I put a number this is  
2 Exhibit Number 5 with some more photos. Which one  
3 are you pointing to now, number 7?

4 A Yeah, that's when the mound was already up  
5 there. And it had rained a lot, so you could see a  
6 lot o asbestos there.

7 Q Is that him (sic)

8 A And that's

9 Q in the photograph?

10 A Yeah, that's me.

11 Q Okay. Can you circle yourself in the  
12 photograph?

13 A (Witness complies.)

14 Q Okay. In the back?

15 A Yes, this one here, the one with

16 Q Put an arrow to your head. Yeah, draw an  
17 arrow.

18 A Arrow.

19 Q An arrow. You're so close. Okay. Thank  
20 you. And what are you doing in that picture?

21 A Yeah, the mound was already there, so I was  
22 showing them that there was more asbestos.

23 Q Is this him (sic) in photograph 8?

24 A Yes.

25 Q Can you put an arrow to yourself there?

1 A (Witness complies.)

2 Q And what is he (sic) doing in that picture?

3 A Looking or more asbestos.

4 Q Is that a rake that he's (sic) using?

5 A A rake in order to

6 Q And how deep

7 A kind o , yeah, move dirt around.

8 Q How deep would you go digging with the rake?

9 A Just just you know, just on top. Just  
10 on top. We don't go

11 Q On the sur ace?

12 A under. Yeah, sur ace. Yeah, we don't go  
13 underneath, no.

14 Q Okay. And did this back loader spread the  
15 soil or you be ore you searched it with the rake in  
16 number 6?

17 A No, that was used or the mound in order to  
18 create that mound.

19 Q The mound that we see in number 1?

20 A Uh huh. We would select an area, and then he  
21 would start, you know, piling up.

22 Q And what's happening in number 9?

23 A That is the water truck that I mentioned  
24 be ore. It spreads water to avoid the dirt not to  
25 go to go up in the air, because we need to work

1 with the wet dirt.

2 Q Is this a mound in number 9, or a piece o  
3 the mound?

4 A Yeah, he he gushes water there irst so  
5 that we can work on it, and then that area later.

6 Q Who is this lady in number 7?

7 A She used to work there with us, but I don't  
8 remember her name.

9 Q Okay. And is that her also in number 5?

10 A She would come and go. I don't know i she  
11 was an inspector. But she used to go there pretty  
12 o ten.

13 Q But her job was not the same as his (sic)  
14 job?

15 A No.

16 Q Okay. What is photograph number 10?

17 A That's one o the locations where they would  
18 get rid o the debris. So there were like big big  
19 stones and things.

20 Q Is this stone marked with some kind o paint?

21 A Yes.

22 Q And what was the paint or?

23 A Those marks are there because there was  
24 asbestos there, too.

25 Q Okay.

1           A       So there were areas marked.

2           Q       And what's happening in photographs 11  
3       and 12?

4           A       Those are the trucks loading. But when that  
5       happens, we were about       we were about to leave. At  
6       the beginning we were there when the trucks came; but  
7       once we finished the job, I do know that they had to  
8       take that mound       the mound away       rom there.

9           Q       Okay.

10          A       They had to take the dirt, the mound o dirt,  
11       away.

12          Q       And when you were there, how many trucks were  
13       coming to the site?

14          A       Well, I wouldn't know. I never counted that.  
15       That was not my job. But I know that there were about  
16       10 to 12. The thing is that by the time they would  
17       have to load and unload and come back       actually, to  
18       be honest, I really don't know.

19                At the beginning, there were like one or two;  
20       but then again, since they took so long       rom going and  
21       coming, there was a big       you know, a long distance.  
22       There were about 10 or 12. I don't know. I never  
23       dealt with that, so I don't.

24          Q       Does the asbestos look di       erent a ter a  
25       rain?



1           A       No, it didn't look different; it's just, it  
2       was very easy to locate because it's like the rain  
3       cleans it out so you can really see it.

4           Q       Okay.

5           A       You can see it pretty easily.

6           Q       And you were trained to identify the asbestos  
7       in your       in your class?

8           A       Yes, in that       in that class, yes.

9           Q       In the class, were you also trained in safety  
10       or asbestos?

11          A       Uh huh.

12          Q       Yes?

13          A       Yes.

14          Q       And is this the safety vest in picture  
15       number 7 that you were given to wear at the job?

16          A       That was not really for our safety there;  
17       it's for       for       for the traffic, you know, because  
18       there was going to be equipment there. There was  
19       going to be a truck       I mean, trucks coming and  
20       going.

21          Q       So for trucks to see you?

22          A       Uh huh.

23          Q       But no equipment was given or a mask       or  
24       was       let me withdraw.

25                   Was any       was any mask       did they give you

1 a mask or a respirator? Any other body equipment?

2 A No, they never gave us anything like that.  
3 You see the pictures. That's the way we used to work.

4 Q Is this your own clothes that you're wearing  
5 at the job?

6 A Yes, o course.

7 Q And did they give you any jumpsuit to wear?

8 A No, no, they wouldn't give us anything. I  
9 you see this picture here

10 Q Number 5, yeah, I see.

11 A that lady, she's wearing her own clothes.  
12 She's just, you know, using equipment like a routine.  
13 But that actually doesn't solve anything.

14 Q Did you wash your clothes in your own washing  
15 machine at home?

16 A O course.

17 Q So the clothes you wore at the job site you  
18 wore home, and then you washed them in your own home?

19 A Yeah, I would drive in my own car with those  
20 clothes and would go.

21 Q Okay.

22 A The only thing that we would remove was  
23 were our boots, because we were yeah, there was  
24 like water, and, you know, we had to use boots or it.

25 Q And did you leave your boots at the job site,

1 or in your truck? What happened to the boots?

2 A In my trunk.

3 Q Okay.

4 THE COURT REPORTER: Trunk or truck?

5 THE INTERPRETER: Trunk.

6 BY MR. BROOKES:

7 Q Was another worker there named Elvin?

8 A Yes.

9 Q And they call him Elvin Cuba?

10 A Cubille.

11 THE INTERPRETER: Cubille, C U B I L L E.

12 BY MR. BROOKES:

13 Q Okay. And how many workers were there?

14 A We were always at least three there.

15 There was a week that Cubille just couldn't make it,  
16 so they brought another guy. But I don't remember his  
17 name. At the end, i I remember correctly, we were  
18 two, only, Salvador and I.

19 Q Could you describe or me how you did the  
20 job, and what you would do when you ound the  
21 asbestos?

22 A Our job there was just to ind asbestos, just  
23 to prove that there was asbestos there.

24 Q So did you use your rake and look with your  
25 eye?

1           A       Yes. Well, yeah, we kind o raked the dirt  
2 around, and then we would ind it.

3           Q       And when you ound it, did you put a lag in  
4 the ground?

5           A       No, I would pick it up. We would put it in a  
6 bag, and we we would take we would take it  
7 and back then, we didn't have that little house  
8 there, or tent, and we would just leave it there,  
9 so or the inspectors to take a look at. We would  
10 put it in a special bag or asbestos and we would tie  
11 it up.

12          Q       How would they know which piece o asbestos  
13 came rom where on the site?

14          A       It would depend on the area we were working  
15 on. For example, i we were working in a speci ic  
16 place, we would be raking around, and then we would  
17 select. But we were always concentrated in this area,  
18 a little bit over here, a little bit over there. But  
19 it was just the whole area.

20          Q       But they didn't record on the bag, it was  
21 ound in like sector A 1?

22          A       No.

23          Q       Okay. Were all the samples mixed together?

24          A       Yes.

25          Q       Okay.



1           A       Yeah, we would           or example, I would start,  
2       you know, gathering parts and put them all in the bag.  
3       Once the bag was full, I would just close it and would  
4       start with another one.

5           Q       And so if asbestos was found in that  
6       location, then the equipment would come and push it  
7       into the mound; is that what happened?

8           A       Yes, yes, if we were working in a specific  
9       area, once we could prove somehow that there was  
10      asbestos there, we would bring everything together to  
11      the mound, yeah.

12          Q       Was there just one mound, or many mounds?

13          A       Just one.

14          Q       Okay. And that's in       shown in number 1?

15          A       Yeah, just one mound.

16          Q       Now, it looks like that there's some grass  
17      growing on the mound. Was there grass always growing  
18      on that mound?

19          A       Yes, because we stopped at some point. I  
20      wouldn't       I wouldn't be able to tell you or how  
21      long: one week, two weeks. But, yeah, it was halted.  
22      And after a while we started again, after we were told  
23      that, well, they were going to take that mound away.

24          Q       So is it correct to say in the beginning  
25      there was no grass; but then after you stopped, there

1 was enough time or the vegetation to grow, and then  
2 you started up again?

3 A Uh huh, si.

4 Q Did he (sic) ever find pipe fragments?

5 A That's what asbestos is.

6 Q Okay. What was the biggest piece that he  
7 (sic) found? Can he show in his hand?

8 A Like this big, smaller, smaller, until up  
9 to this size.

10 Q So no more than a couple of hands full?

11 A Yes.

12 Q Okay. All the way down to the ground up  
13 like coffee grinds?

14 A Yes.

15 Q Was there cattle or cows in the site?

16 A Yes, yeah, we have to kind of scare them away  
17 in order to work. Yeah, we had to scare them away in  
18 order to be able to work.

19 Q Would they ever walk right through your work  
20 area?

21 A Oh, yeah, of course. Because they knew  
22 vegetation, you know, it was

23 THE COURT REPORTER: I'm sorry?

24 THE WITNESS: They knew vegetation that grew  
25 up there, it was very yummy for them. So I'm

1 saying, i I'm contaminated, those poor animals  
2 are very contaminated, too, because they were  
3 there with us all the time. In the morning when  
4 we got there, we had to scare them away all the  
5 time.

6 BY MR. BROOKES:

7 Q Did they lock the area with a fence?

8 A No, it's totally way open. When we scare  
9 them away, they would come to this area right where  
10 the the vegetation is right here. Because, you  
11 know, there was shade there, so

12 Q Did you ever see anyone, any people, on the  
13 site, or evidence that kids were using it when you  
14 weren't working?

15 A No.

16 Q Any ATV bikes?

17 A No.

18 Q Okay. Any armers?

19 A No, no. Everybody that I saw there was  
20 related to the job somehow.

21 Q Okay. Was there anyone cutting grass in the  
22 area?

23 A No. The truck guy, or example, he used to  
24 work there without protection at all, the one that  
25 moved the mound, or, you know, removed dirt or stu .

1 How do you call this this this here?

2 THE INTERPRETER: Don't ask me.

3 THE WITNESS: You mentioned the name be ore.

4 MR. BROOKES: I'm going to take a five minute  
5 bathroom break. I'll be right back. We're almost  
6 done.

7 (A break was held.)

8 BY MR. BROOKES:

9 Q Is Salvador Nava, was he your supervisor?

10 A Yes.

11 Q Did Salvador Nava ever tell you not to go  
12 outside your area to look for asbestos?

13 A He used to tell us that the area of work was  
14 that specific concentrated in that area.

15 Q Were you allowed to go to other portions of  
16 the property outside your work area to look for  
17 asbestos?

18 A No, we had to work in a specific area.

19 Q And how about were you allowed to look on  
20 the roadways, the dirt roads that came into this work  
21 area?

22 A No, just in this area only.

23 Q Okay. Do you have any concerns for your own  
24 health as a result of working on this site?

25 A Well, yes, yes, of course. Actually, I need



1 to see a specialist because it's been our months  
2 about our months since I started to kind o have like  
3 a cough, a constant cough, like a cold that never goes  
4 away. But it's not a cold; it's just coughing and  
5 coughing and coughing.

6 Q Okay. And he's he has have you been  
7 tested yet?

8 A I'm in the process to be seen by a lung  
9 specialist.

10 Q Okay. When you le t this site on your very  
11 last day, was the site cleaned up then?

12 A When we withdrew rom the area, there were  
13 only trucks there, trucks to remove the mound o dirt.

14 Q Did you ever go back a ter the trucks removed  
15 the mound o dirt?

16 A No, I didn't come back go back a ter that.

17 Q Did any o the other workers you worked with  
18 go back, a ter the mound was removed, to see i the  
19 asbestos was all gone?

20 A I don't know what Salvador did, because we  
21 was you know, he was in charge in that company.  
22 But I don't know. The other guys were not documented,  
23 undocumented, so

24 Q Undocumented in terms o asbestos  
25 certi ication?

1           A       No, that they were sent back to their  
2 countries.

3           Q       Oh, undocumented or alien status?

4           A       Yes.

5           Q       And who       which were those guys? Was that  
6 Cu       Cub       Elvis (sic)?

7           A       Elvin Cubille. I don't remember the name o  
8 the other guy. They are back to their countries.

9           Q       I think there's one other name mentioned in  
10 this report. Let me see i I can ind it.

11          A       Yeah, there were other guys working there at  
12 some point. Because like one day Elvin couldn't make  
13 it, or the other guy couldn't make it, so but  
14 Salvador and I, we were always there.

15          Q       Okay. Do you remember a man named Michael  
16 Schook?

17          A       No.

18          Q       Okay. Leigh Simmons?

19          A       No, I don't remember.

20          Q       That's okay.

21          A       It's been it's been years, you know.

22          Q       I'm just checking some names that are on the  
23 report. A Sherrill Culliver?

24          A       No.

25          Q       Okay. Do you know an Eric Goeller?

1           A       I do remember Salvador because he was our  
2 boss.

3           Q       Okay. Do you remember anyone named Eric  
4 Goeller, G O E L L E R?

5           A       Is that an inspector?

6           Q       I think some kind o

7           A       Yeah, that sounds amiliar.

8           Q       Maybe a sampler. Like a sampler, maybe?

9           A       Uh huh.

10          Q       Someone named Robbie?

11               THE INTERPRETER: What's the name?

12 BY MR. BROOKES:

13          Q       Robbie, like Rob, Robbie, Robbie.

14          A       I       I might remember. But, no, I'm not  
15 sure.

16          Q       Okay. Is the woman in picture 5 Leigh  
17 Simmons?

18          A       She might be. I don't remember her name.

19          Q       Okay. Did you ever see

20          A       And she speaks English only, so

21          Q       Did you ever see the owner o the property?

22          A       No.

23          Q       Do you know where the asbestos in the trucks  
24 was going?

25          A       I heard that supposedly they would be

1       taken       they used to take them to Okeechobee, a  
2       speci ic location where it was supposed to be taken  
3       to.   There were only two locations where they could  
4       get rid o   the contaminated product, like in Daytona  
5       or Okeechobee.

6           Q       Okay.   Is there anything else you remember  
7       about the time you were working there?

8           A       I don't remember much more.   It's been so  
9       long.

10               MR. BROOKES:   Okay.   I think that's it.

11               Thank you very much.

12               (Examination Under Oath concluded at

13       6:48 p.m.)

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF LEE)

I, the undersigned authority, certify that

b(6) Privacy [REDACTED] personally appeared before me and was  
duly sworn.

WITNESS my hand and official seal this 27th day  
of June, 2016.



Christi K. Cole  
Notary Public State of Florida  
My Commission No: EE 860147  
Expires: February 15, 2017

Personally Known:

Yes

OR Produced Identification:

Type of Identification Produced:



CERTIFICATE OF OATH

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 Notary Public State of Florida  
 My Commission No: EE 860147  
 Expires: February 15, 2017

Personally Known: \_\_\_\_\_

OR Produced Identification: \_\_\_\_\_

Yes

Type of Identification Produced: \_\_\_\_\_

FL ID Card

## 1 REPORTER'S EXAMINATION UNDER OATH CERTIFICATE

2  
3 STATE OF FLORIDA)

4 COUNTY OF LEE)

5  
6 I, Christi K. Cole, Certified Professional Court  
7 Reporter and Notary Public in and for the State of  
8 Florida at Large, certify that I was authorized to and  
9 did stenographically report the Examination Under Oath  
10 of ALFREDO PEREZ CASTILLO; that a review of the  
11 transcript was not requested, and that the transcript  
12 is a true and complete record of my stenographic  
13 notes.

14 I further certify that I am not a relative,  
15 employee, attorney, or counsel of any of the parties,  
16 nor am I a relative or employee of any of the parties'  
17 attorneys or counsel connected with the action, nor am  
18 I financially interested in the action.

19  
20 DATED this 27th day of June, 2016.

21  
22 

23 \_\_\_\_\_  
24 Christi K. Cole, Court Reporter  
25

# RETRA TRAINING SERVICES

Florida Approval #149-0001008

113 S Diston Avenue  
Tarpon Springs, FL 34689  
1-727-938-5439

**b(6) Privacy**

2185 Clearbrook Cir. #101, Naples, FL 34112

Has successfully completed the Required Training for Asbestos Accreditation  
as required by TSCA Title II

*Asbestos Worker Refresher (Spanish) FL4723*

024936

F

Course Date:

July 11, 12-18, 19

Exam Date:

July 19, 2009

Expiration Date:

July 19, 2010

Course Location:

Tarpon Springs, FL

Certification Number

Nava

Instructor

*John W. Brown*

Course Administrator

Exhibit No. 1  
6-24-16  
CHRISTI COLE



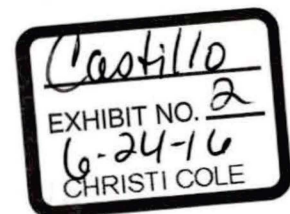
# SITE LOCATION MAP



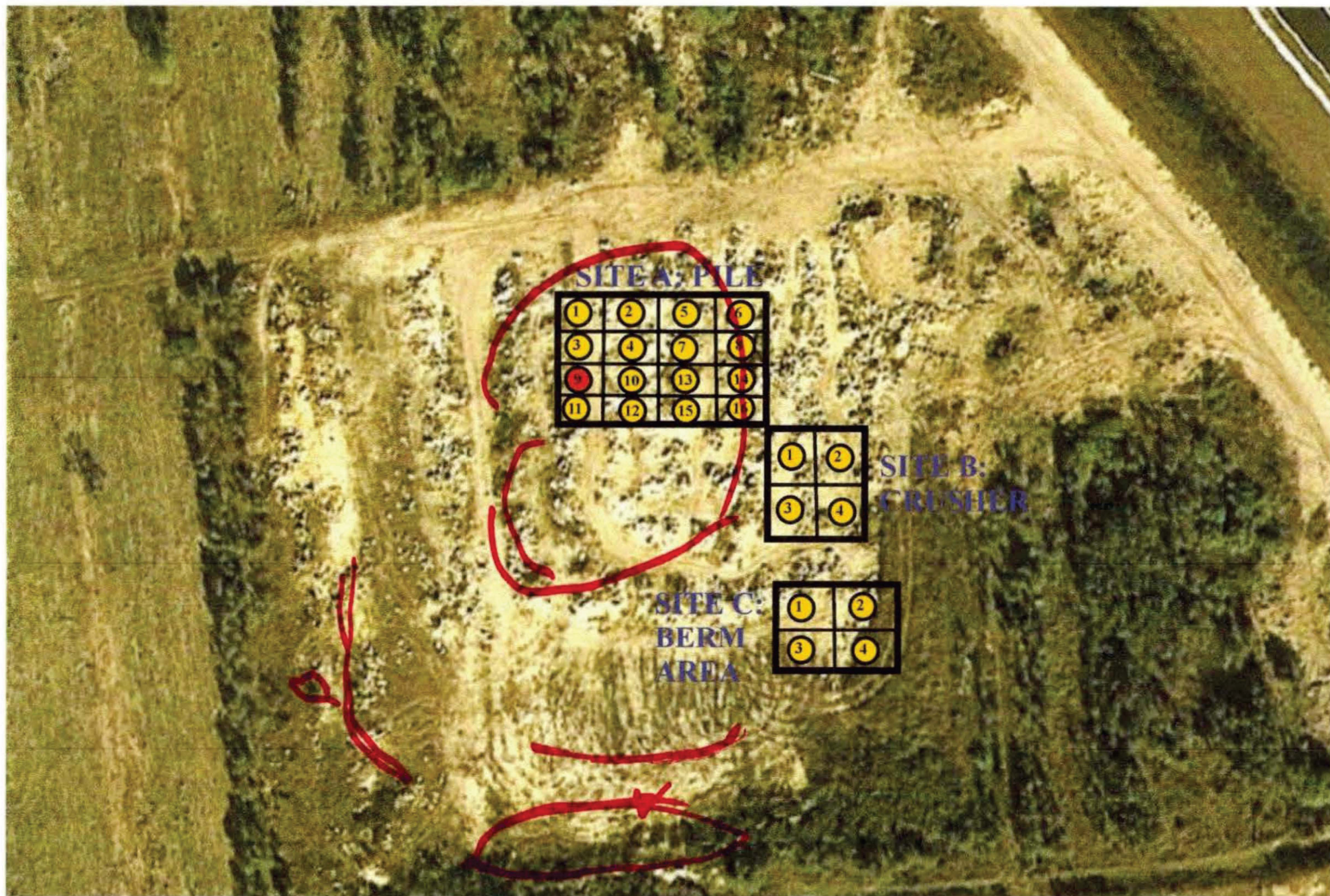
Drawing not to scale

**Tex Development Site  
Bonita Springs, Florida**

Environmental Services Division  
American Management Resources Corporation  
5230 Clayton Court, Fort Myers, Florida 33907







Site A=Removed contaminated pile  
 Site B=Suspected crusher location  
 Site C=Berm Area

● =Sample Location  
 ● =Sample #9: Positive for Chrysotile & Crocidolite

Castillo  
 EXHIBIT NO. 3  
 6-24-16  
 CHRISTI COLE





①

Photo 1. Tex Development site Bonita Springs, FL. AMRC project # 09-071616-AC



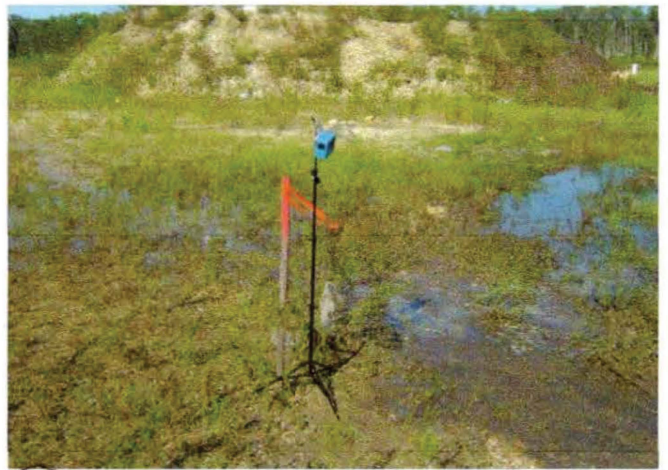
②

Photo 2. Tex Development site; South / East berm.



③

Photo 3. Contaminated pile and area warning signs.



④

Photo 4. Area air monitoring during soil removal.



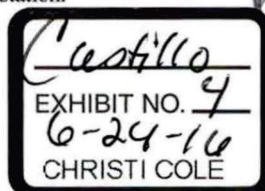
⑤

Photo 5. Decontamination and Re-hydration station.



⑥

Photo 6. Loader spreading soil to be surveyed for asbestos fragments.







7

Photo 7. Workers utilizing hand tools to survey soil for asbestos fragments.



8

Photo 8. Workers surveying soil for asbestos fragments.



9

Photo 9. Water truck utilized to keep soil wet during removal.



10

Photo 10. Asbestos fragments identified and removed.



11

Photo 11. Contaminated soil disposed of in transport truck.



12

Photo 12. Waste manifest given to each truck leaving the site, and recorded daily.

Castillo  
EXHIBIT NO. 5  
6-24-16  
CHRISTI COLE